

Exhibit T-___ (TLW-T-1)
Docket No. UT-033011
Witness: Thomas L. Wilson, Jr.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Petitioners,

v.

ADVANCED TELECOM GROUP, INC.,
et al,

Respondents.

DOCKET NO. UT-033011

DIRECT TESTIMONY OF

Thomas L. Wilson, Jr.

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

June 8, 2004

PUBLIC VERSION

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TABLE OF CONTENTS

Background..... 4

Second Cause of Action (Violation of 47 U.S.C. §252(e)) 14

Filing Requirement 14

Timeliness 55

Third Cause of Action (Violation of 47 U.S.C. §252(i))..... 75

Fifth Cause of Action (Violation of RCW 80.36.170)..... 78

Sixth Cause of Action (Violation of RCW 80.36.180) 98

Seventh Cause of Action (Violation of RCW 80.36.186)..... 110

Staff Recommendations for Penalties 127

Conclusion 127

1 **Q. Please state your name and business address.**

2 A. My name is Thomas L. Wilson, Jr., and my business address is 1300 South
3 Evergreen Park Drive Southwest, P.O. Box 47250, Olympia, Washington, 98504.
4 My business e-mail address is tomw@wutc.wa.gov.

5
6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Washington Utilities and Transportation Commission
8 (Commission) as a telecommunications analyst.

9
10 **Q. Please state your qualifications to provide testimony in this proceeding.**

11 A. I have been a telecommunications analyst on Staff at the Commission since
12 January 1986. Please see Exhibit No. ___ (TLW-2) for a complete description of
13 my educational background, and job experience.

14
15 **Q. Please summarize your testimony?**

16 A. The purpose of my testimony is to show that secret interconnection agreements
17 between Qwest Corporation formerly known as (f/k/a) U S WEST
18 Communications, Inc., (Qwest) and several competitive local exchange carriers
19 (CLECs) were not timely filed with Commission as required by the

1 Telecommunications Act of 1996 (The Act). I will show harm was caused, and
2 the offending carriers are liable for penalties for violations of §252(e)
3 summarized in Exhibit No. ___ (TLW-71) for all respondents and for Qwest for
4 violations of §252(e), §252(i), RCW80.36.170, RCW 80.36.180, and RCW 80.36.186,
5 as summarized in Exhibit No. ___(TLW-74).

6 I will begin by briefly describing my understanding of the background
7 and issues in this case. I will also discuss the underlying regulatory framework
8 relating to the issues. Exhibit No. ___ (TWL-3) provides a list of all of the
9 agreements using the nomenclature identifying each agreement found in Order
10 No. 05, Attachments A and B. Following my Exhibit No. ___ (TWL-3), a copy of
11 each agreement is found as its own exhibit. Thus Exhibit No. ___(TLW-3)
12 provides a key to connect the numbered list of secret agreements in Order No. 05
13 Attachments A and B to all of the agreements involved in this complaint. I will
14 describe, analyze, explain, and discuss each of the secret agreements for each
15 cause of action.

16 First I will discuss the Second Cause of Action (violation of the filing
17 requirement and timeliness, 47 U.S.C. Section 252(e)). I will establish that each
18 agreement is an interconnection agreement subject to the filing requirement of
19 the Act and that each agreement was not timely filed. Then I will discuss the

1 Third Cause of Action (failure to make available any interconnection, service, or
2 network element to any other carrier the same terms and conditions, 47 U.S.C.
3 Section 252(i)). It is my opinion that each secret interconnection agreement that
4 violates §252(e) for failure to timely file is also a violation of the requirement to
5 make interconnection agreements publicly available for adoption. Next I will
6 discuss the Fifth Cause of Action (did Qwest give undue or unreasonable
7 preference or advantage, RCW 80.36.170). Then I will address the Sixth Cause of
8 Action (did Qwest engage in rate discrimination, RCW 80.36.180). I will also
9 discuss the Seventh Cause of Action (did Qwest give undue preference or
10 advantage as to noncompetitive services, RCW 80.36.186).

11 In short, my testimony will provide analysis of violations of local
12 interconnection-related requirements of federal law, as well as analysis of the
13 harm that has been caused to the telecommunication marketplace, including
14 state law violations, because the agreements were kept secret and un-filed. I will
15 offer information and insight gained from discovery, and from similar
16 proceedings before public service commissions in Colorado and by the Federal
17 Communications Commission (FCC). In conclusion, I will offer
18 recommendations regarding penalties.

1 Background

2 **Q. Please provide background discussion about your understanding of the**
3 **issues?**

4 A. The Commission’s Order No. 05 in this case provides a background and history
5 of this proceeding. I offer the following to further explain the facts leading up to
6 and occurring concurrently with this proceeding.

7 It is my understanding that all of the respondents are potentially liable for
8 the second cause of action – failure to file and timeliness.¹ Secret interconnection
9 agreements related to the second cause of action are enumerated in Exhibit A of
10 Order No. 05. I will analyze the secret interconnection agreements listed in
11 Exhibit A under the second, third, fifth, sixth and seventh causes of action. I will
12 examine Exhibit B agreements under the fifth, sixth, and seventh causes of action.

13
14 **Q. Please discuss the underlying regulatory framework upon which you base**
15 **your testimony?**

¹ At times I will refer to a respondent as “formerly known as” or “f/k/a” because the contracts cover a time period during which several CLEC parties changed names due to various affiliated interest and/or financial transactions generally not subject to general review subject to competitive classification waivers under RCW 80.36.320. The name change histories are evident in the chronology and naming of parties set forth in each individual agreement, filed as exhibits to my testimony hereto.

1 A. Washington’s policy goals for telecommunications as set forth in RCW 80.36.300,
2 plus the Telecommunications Act of 1996 (The Act) and its implementation by
3 the FCC and the states are the underlying regulatory framework.

4 RCW 80.36.300 is a policy declaration that is an important foundation for
5 this case. RCW 80.36.300 pre-dates the passage of The Act by 12 years and
6 initiated the Commission’s implementation of regulatory flexibility as
7 competition in the telecommunications industry emerged (even though
8 incumbent monopoly conditions continue to exist). In anticipation of the benefits
9 from rapidly advancing technology and declining costs, Washington has
10 embraced competition in the telecommunications industry by offering regulatory
11 flexibility while maintaining oversight to protect captive customers. The
12 legislature’s policy statement contains the same promise to Washington as The
13 Act – maintaining universal service while promoting competitive diversity in the
14 supply of telecommunications services and products in telecommunications
15 markets throughout the state.

16 Under federal law, §251 of The Act sets forth obligations of
17 telecommunications companies to interconnect with competitors, including
18 special requirements for the incumbent local carrier (ILEC) to negotiate in good
19 faith the particular terms and conditions of interconnection agreements to fulfill

1 their obligations. The good faith requirement has been implemented through
2 numerous adjudications.

3 Qwest now publicly offers a Commission-approved, standardized
4 interconnection agreement competitors may efficiently receive without having to
5 negotiate or arbitrate terms and conditions. The Statement of Generally
6 Available Terms (SGAT), including rates, service performance assurance plans,
7 and operational support systems (OSS), has made for a more effective regulatory
8 process necessary to implement the challenges of local competition.

9 Not all carriers find that the SGAT meets all of their specific needs. Some
10 carriers entered into interconnection agreements with Qwest before the SGAT
11 was available. Over time many interconnection agreements are amended
12 pursuant to The Act. One of the most powerful provisions of The Act for
13 promoting an effective, efficient competition is the requirement that
14 interconnection agreements be filed with the state commission. There are several
15 reasons that this filing requirement is important, perhaps the most important
16 reason is that one of the fundamental characteristics of a theoretically
17 competitive market is perfect information about price. Filing the contracts makes
18 them publicly available for review. The filing obligation is augmented by the
19 requirement of §252(i) that terms and conditions within filed and approved

1 interconnection agreements must be made publicly available for adoption in
2 entirety, or, on a pick and choose basis. This way, new competitors do not have
3 to blaze their own trail. If CLECs are permitted to follow an established, efficient
4 path, made publicly available, each CLEC has the same opportunity in the
5 market place and no carrier receives preference or prejudice from the incumbent
6 monopolist.

7
8 **Q. Please explain how the marketplace may be damaged by discrimination and**
9 **the existence of so many secret agreements?**

10 A. The key is secrecy and the ability of the incumbent monopolist to keep customers
11 in separate classes of service by not allowing other carriers to find out that they
12 are being treated differently. If a particular CLEC is permitted to have secret
13 most favored carrier status, the result could be a competitive advantage for that
14 CLEC as well as the ILEC, a depression of competition in the market, and,
15 ultimately a decreased benefit for consumers. With this framework it is
16 absolutely critical in terms of meeting the intended purpose of The Act that all
17 relevant terms and conditions are specified in interconnection agreements, and
18 that they be filed properly and made available for adoption. It is sometimes
19 difficult to identify the utility of a particular term contained in an interconnection

1 agreement. However, the “multiplier effect” of lack of information may be
2 ascertained. For example, the failure to file agreement X between the ILEC 1 and
3 CLEC 1 may influence the management decisions of CLEC 2 in more ways than
4 simply CLEC 2 not knowing it could adopt the particular terms of the agreement.
5 CLEC 2 may enter into agreements Y and Z and allocate its investment into
6 market 1 instead of market 2 or telecommunication service 1 instead of
7 telecommunication service 2 because it did not know it could take advantage of
8 the terms of agreement X. This lack of investment may alter the market and the
9 management decisions of CLECs 3, 4, and 5. This effect is further compounded if
10 agreements Y and Z are kept secret and not filed. Thus, the damage to the
11 marketplace from discrimination is multiplied as more and more secret
12 agreements are implemented, but not filed. Furthermore, since the ILEC has
13 perfect information because it is entering into the agreements with the various
14 CLECs, it may use the information to attempt to influence which CLECs succeed
15 in which marketplace and the direction of investment and competition to its
16 benefit.

17

1 **Q. Please explain your understanding of the term “interconnection agreement”?**

2 A. In its Memorandum Opinion and Order of October 4, 2002, the Federal
3 Communications Commission ruled “an agreement that creates an ongoing
4 obligation pertaining to resale, number portability, dialing parity, access to
5 rights-of-way, reciprocal compensation, interconnection, unbundled network
6 elements, or collocation is an interconnection agreement that must be filed
7 pursuant to section 252(a)(1).”² For each agreement, then, its status as an
8 “interconnection agreement” for filing purposes turns first on whether it creates
9 ongoing obligations, and second on whether those obligations pertain to the
10 services defined in section 251(b) or (c).

11

12 **Q. Please describe which terms found in the various agreements meet the**
13 **definition of “interconnection agreement”?**

14 A. As a telecommunications economist assigned to work on implementation of the
15 Commission’s review and approval of interconnection agreements it is my
16 opinion that all prices, rates, services, terms, and conditions that have a bearing
17 upon the economic value and functionality of the services defined in §251(b) or

²Memorandum Opinion and Order, In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), WC Docket No. 02-89 (Oct. 4, 2002), at ¶ 8 (emphasis in original); see also *id.* n.26 (“Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1).”).

1 (c) are appropriately part of an interconnection agreement, and by themselves
2 are interconnection agreements if they bear upon an entire agreement in part or
3 in whole. Thus, from the standpoint of implementation of the regulatory
4 framework, it is critical that a broad analysis is considered when analyzing
5 economic value and functionality. It is also important to consider whether it
6 would be necessary for the price, rates, services, terms, and conditions to be in an
7 interconnection agreement in order for a CLEC to have a meaningful
8 opportunity to compete, and if unavailability would impair competition. In the
9 competitive market place under Section 251(b) and (c) it is very important that
10 discrimination does not occur.

11
12 **Q. Why is the opportunity to “pick and choose” parts of interconnection**
13 **agreements for adoption critical to the competitive marketplace and to prevent**
14 **discrimination?**

15 A. If the prices, services, rates, terms and conditions are all available for public
16 review, the CLECs themselves can determine if it is a better deal and opt into it if
17 they choose. On the other hand, if the agreement is not available because it has
18 not been made public, CLECs do not have the opportunity of choice. CLECs
19 themselves are in the best position to determine the economic value and

1 functional equivalence of a price, service, rate, term or condition of an
2 interconnection agreement. Furthermore, discrimination will be less likely to
3 occur, if agreements are public available for adoption, at least substantively,
4 because then, no carrier is prejudiced by the existence of secret terms.

5
6 **Q. Please describe your understanding of the carrier filing obligations?**

7 A. In Docket UT-960269 the Commission issued its policy interpretive statement
8 containing procedures for filing interconnection agreements, setting forth the
9 policy and interpretive procedures. Since that time carriers have been on notice
10 that interconnection agreements are supposed to be filed in good faith within 30
11 days of signing, and anything that amends an interconnection agreement is
12 subject to the filing requirement as well (excluding issues such as a name change
13 of a contact person, bank account number change or other issue that does not
14 have an effect on the operation of the agreement). As a general matter, it is my
15 opinion that a period of time greater than thirty days is a significant delay in the
16 competition-enabling operability of new agreements under §252(i). A period of
17 time greater than thirty days could make operations impractical as carriers wait
18 for approval from the Commission prior to reliance on the agreement terms. A
19 thirty day period gives the parties ample opportunity to file agreements and

1 assures that the agreements are enforceable before they are relied upon. I will
2 show that the Respondents are all very well aware, practiced, and versed in this
3 common practice.

4
5 **Q. As a practical matter, why is the filing requirement necessary?**

6 A. From an operational standpoint the filing requirement is necessary obligation for
7 both CLEC and ILEC because the CLEC must have an agreement it can rely on
8 before it goes out and starts promising customers service. Without an approved
9 interconnection agreement most ILECs will not accept local service requests or
10 originate or terminate traffic between the two carriers. The ILEC must have an
11 interconnection agreement that is enforceable or else it cannot legally bill for
12 services rendered. As a practical matter interconnection agreements and
13 amendments must be filed so that the Commission can do its duty to approve
14 them within 90 days, as required under The Act, and also to make copies
15 available for inspection purposes to implement §252(i). On April 12, 2000, the
16 Commission issued its first revision of the policy interpretive statement on
17 procedures involving interconnection agreements to address details of

1 procedures for making arrangements in approved agreements available to
2 requesting carriers on an expedited basis.³

3
4 **Q. May the Commission infer that the parties know the filing requirements?**

5 A. Yes. As background, each respondent has ample experience with filing
6 interconnection agreements. In every filing of an interconnection agreement the
7 parties have acknowledged that the filing is being made pursuant to the
8 Commission's policy and interpretive statement set forth in Docket No. UT-
9 960269, which was issued on June 28, 1996. Furthermore, my understanding is
10 that the Commission order approving an interconnection agreement always says
11 that any amendments to the approved interconnection agreement, taken in their
12 entirety and together with the existing agreement, constitute a new
13 interconnection agreement and so the Commission reminds parties in the order
14 that amendments have to be filed as new agreements.

15

³ Docket No. UT-990355.

1 Second Cause of Action (Violation of 47 U.S.C. §252(e))

2 **Filing Requirement**

3 **Q. Please outline your analysis of whether each agreement violates the timely**
4 **filing requirement.**

5 A. For this portion of my analysis I will analyze the agreements for each CLEC
6 party to an interconnection agreement with Qwest. These agreements are listed
7 in Order No. 05 Exhibit A. To enable the analysis, please refer to Exhibit No. ____
8 (TLW-70). Referring to Exhibit No. ____ (TLW-70), column A shows
9 interconnection services, rates, terms or conditions categorized by subject area,
10 and the first row across lists the agreements. I will describe each interconnection
11 service, rate, term or condition by subject area category shown in Column A, to
12 show that there is evidence each agreement contains at least one element of a
13 service, rate, term or condition sufficient to constitute an amendment to an
14 interconnection agreement. With that explanation, the "X's" I have put in
15 Exhibit No. ____ (TLW-70) show that each secret agreement in Exhibit A is an
16 interconnection agreement or contains elements sufficient to constitute an
17 amendment to what should be considered an interconnection agreement. Then I
18 will provide analysis of the number of days each secret interconnection
19 agreement was late or untimely filed.

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Q. Is it your position that if an agreement contains an interconnection element, then that agreement is an interconnection agreement?

A. Yes.

Q. Is it your position that all of the agreements found in Exhibit A are interconnection agreements?

A. Yes, unless otherwise noted, all Exhibit A agreements are interconnection agreements.

Q. What is your opinion about Exhibit A agreements generally?

A. Generally, it is clear on their face, each Exhibit A agreement is an interconnection agreements. Therefore my discussion of each agreement will be limited to highlighting certain parts of each agreement.

Q. Please provide underlying information useful in analyzing the issue of whether a particular agreement is an interconnection agreement.

A. To begin with, it is interesting to note that in secret negotiations with the CLECs, Qwest insisted that the agreements were not interconnection agreements, and

1 swore the CLECs to secrecy.⁴ As the FCC indicated in the Local Interconnection
2 Order cited above, competitive entry is achieved via interconnection agreements
3 under The Act. The Commission recognized a list of eleven prerequisites for
4 effective local competition in 1995:

- 5 1. Central office interconnection arrangements
- 6 2. Connections to unbundled network elements
- 7 3. Seamless integration into local exchange company interoffice networks
- 8 4. Seamless integration into local exchange company signaling networks
- 9 5. Equal status in/control of network databases,
- 10 6. Local number portability
- 11 7. Reciprocal inter-carrier compensation arrangements
- 12 8. Equal rights to/control over number resources,
- 13 9. Cooperative practices and procedures
- 14 10. Economically efficient pricing signals; and
- 15 11. IntraLATA equal access.⁵

16
17 All of the secret interconnection agreements in this case relate to one or the other,
18 or some combination of, all of the prerequisites of local competition. This nearly
19 ten-year old list of prerequisites of effective local competition has evolved into
20 interconnection agreements such as Qwest's Statement of Generally Available
21 Terms (SGAT). Exhibit No. ____ (TLW-70) categorizes the services, rates, terms
22 and conditions in the secret agreements between CLECs and Qwest using
23 general areas of subject matter. I used the same general categorization scheme as

⁴ See Eschelon response to Staff DR 04, see page 8 of Exhibit No. ____ (TLW-76).

⁵ *In the Matter of the Petition of Electric Lightwave, Inc., for an Order Granting Competitive Telecommunications Company Classification*, Docket No. UT-940403, Order Granting Petition at 4 (January 11, 1995).

1 found in the Qwest SGAT for Washington, which I downloaded from the Qwest
2 wholesale services website. Each of the services, rates, terms or conditions
3 categorized can be found in relatively simple, often identical, form in most
4 interconnection agreements between CLECs and Qwest. I chose to reference the
5 SGAT because it has received the most critical attention most recently and thus
6 serves as a useful standardized reference. The SGAT's genesis was roughly
7 contemporaneous with the time period concerning the secret agreements
8 involved in this case. I think that the development of the SGAT in 271
9 workshops reflects the cumulative experience with interconnection in
10 Washington. It is my opinion that if a service, rate, term or condition is in the
11 SGAT, and if it is in an agreement between a CLEC and Qwest, it should be filed
12 as an interconnection agreement. I do not intend to limit any negotiated,
13 arbitrated or adjudicated amendment that contains individually novel or unique
14 elements or amendments, nor do I intend to limit approved agreements or
15 amendments by my definitional statement that the SGAT is a good model to look
16 at in this analysis. I was assigned Staff on the 271 dockets, and I sat through
17 numerous stakeholder workshops on many issues, particularly UNE,
18 Interconnection, and OSS issues. I also assisted in developing several of the
19 issues matrices for the workshops. Although my references to the SGAT might

1 not always be to material that is exactly word for word the same as what is found
 2 in a secret interconnection agreement, I think the two references are usually close
 3 enough for the purpose of analyzing a given secret price, service, term or
 4 condition to determine whether it is economically or functionally the same as the
 5 state of the art in the SGAT. In the same alphabetical order as the items appear
 6 in Exhibit No. ___ (TLW-70) Column A, I provide reference to the Qwest SGAT
 7 for Washington to each service, price, term or condition identified in Exhibit No.
 8 ___ (TLW-70) below:

Item	SGAT Reference
11 <u>Collocation</u>	Section 8, Collocation
12 Collocation rates	Section 8, Collocation
13 Facilities decommissioning	Section 8.2.1.14.1 Reclamation of Space
14 <u>Interconnection</u>	Section 7, Interconnection
15 DEOT ⁶	Section 7, Interconnection
16 EICT ⁷	Section 7, Entrance Facilities
17 PIC Process ⁸	Section 7.7, Local Interconnection Data
18 Exchange,	
19	Section 7.2.2.4, Jointly Provided Switched
20 Access	
21 Relative Use Factor ⁹	Section 7.3.1.1.3.1, Two-way LIS
22 Facilities Decommissioning	Exhibit A, 7.5, Trunk Disconnect NRC
23 <u>Operations Support Systems (OSS)</u>	Section 12, OSS
24 Daily Usage Information	Section 12.2.5.2.1

⁶ Direct End Office Transport.

⁷ Expanded Interconnection Channel Termination.

⁸ Primary Interexchange Carrier – issue is billing information necessary to properly bill PIC charge to interexchange carriers.

⁹ To determine the mix of types of traffic on a circuit for bill rating purposes.

1	Ordering Process	Section 12
2	<u>Rates</u>	Exhibit A, Washington Rates
3	Rates	Exhibit A, Washington Rates
4	Purchase Agreement ¹⁰	Exhibit A, Washington Rates
5	Bill Settlement ¹¹	Exhibit A, Washington Rates
6	<u>Reciprocal Compensation</u>	Exhibit J, Reciprocal Compensation
7	Reciprocal Compensation	Exhibit J, Reciprocal Compensation
8	<u>Resale</u>	Section 6, Resale
9	Centrex Agreements	Section 6, Resale
10	<u>Service Performance Indicators</u>	Exhibit B, Service Performance Indicators
11	Installation Intervals	Section 8, Collocation, Section 9 UNE, Exhibit B
12	Measurement Factors	Exhibit B, Service Performance Indicators
13	Service Intervals	Exhibit B, Service Performance Indicators
14	Service Metrics	Exhibit B, Service Performance Indicators
15	Service Performance	Exhibit B, Service Performance Indicators
16	<u>Special Request, BFR, ICB</u> ¹²	Exhibit F, Special Request Process, § 17, BFR,
17	ICB	
18	Dedicated Provisioning Team	Exhibit F, Special Request Process, § 17, BFR,
19	ICB	
20	Implementation Process/Plan	Exhibit F, Special Request Process, § 17, BFR,
21	ICB	
22	<u>Terms and Conditions</u>	Section 5, Terms and Conditions
23	Dispute Resolution	Section 5.18
24	Escalation Procedures	Section 12, OSS, Exhibit G, Change
25		Management Process
26	<u>UNEs</u>	Section 9, UNEs
27	FOC Process ¹³	Section 9.2.2.9.7.2, §12.2.1.9.2, access to OSS
28	LIS ¹⁴	See §4, Definitions, §7.1.1, UNEs
29	Mileage	Section 9, UNE rates, Exhibit A
30	MUX ¹⁵	Section 9, UNE rates, Exhibit A

¹⁰ A purchase agreement is actually a factor influencing price in a negotiation. All parties should be afforded the same opportunity.

¹¹ A device such as a bill settlement, rebate, or drawback or other method of altering an approved price *ex ante* actually becomes a factor influencing the outcome of a negotiation. All parties should be afforded the same opportunity.

¹² *Bona Fide* Request, Individual Case Basis.

¹³ Firm Order Confirmation.

¹⁴ Local Interconnection Service.

1	UNE-DS1	Section 9, UNE rates, Exhibit A
2	UNE-DS2	Section 9, UNE rates, Exhibit A
3	UNE-DS3	Section 9, UNE rates, Exhibit A
4	UNE-E ¹⁶	Section 9, UNE rates, Exhibit A
5	UNE-P Conversion Rates	Section 9, UNE rates, Exhibit A
6	<u>Vertical Switch Features</u>	Section 6 - Resale, Exhibit E – Vertical Features
7		for UNE Switching, § 17, BFR, ICB
8	Features	Section 6 - Resale, Exhibit E – Vertical Features
9		for UNE Switching, § 17, BFR, ICB
10	<u>White Pages Directory Listings</u>	Section 10 – Ancillary Services
11	Listings	Section 10.4
12		
13		

14 **Q. Please discuss particular details of each interconnection service, rate, term or**
15 **condition by subject area category shown in Column A, of Exhibit No. ____**
16 **(TLW-70) to show that each one by itself or in conjunction with others is an**
17 **element of an interconnection agreement.**

18 A. I will do so for each agreement below.

19

20 **Q. Please discuss secret agreement 1A between Eschelon and Qwest and explain**
21 **why it is an interconnection agreement.**

22 A. Like many of the agreements, the other terms of 1A are overshadowed by an
23 attempt to pacify Eschelon: Eschelon f/k/a ATT f/k/a Cady (ATI) agrees to drop
24 opposition to the merger of U S WEST and Qwest, and in return valuable

¹⁵ Multiplexing.

¹⁶ UNE-P rate for Eschelon.

1 promises are made by Qwest to improve Eschelon's access to the Qwest network.
2 Other interconnection agreements between Eschelon and Qwest such as 2A, 3A,
3 4A, 5A, 17A, 18A, and 19A build upon this agreement, particularly the
4 provisioning aspects. 1A is an interconnection agreement because it contains
5 elements that are clearly part of ongoing terms, and conditions governing
6 interconnection between the two parties. Eschelon took the position in response
7 to discovery in Colorado that the services provided in 1A were what Eschelon
8 would be entitled to under an interconnection agreement.¹⁷

9 Although the language in the agreement may appear to say otherwise, 1A
10 was not limited to Minnesota, and the dedicated provisioning team discussed in
11 1A applied to Washington. 1A contains the following elements that I have
12 identified as elements of an interconnection agreement, any single element being
13 sufficient to make it an interconnection agreement.

14 a) Rates:

15 ¶ 7 relates to reciprocal compensation. Secret agreements between
16 Eschelon and Qwest concerning reciprocal compensation are a frequent issue in
17 this case. The sequence of filed and approved agreements concerning reciprocal
18 compensation and secret interconnection agreements for reciprocal

¹⁷ See Eschelon response to Colorado 1-9 at b), page 16 of Exhibit No. ____ (TLW-76).

1 compensation provides economic evidence of potential harm. Reciprocal
2 compensation identical to what MFS received was requested by Eschelon f/k/a
3 ATT in their original Washington interconnection agreement approved February
4 24, 2000, and this also demonstrates that 1A is an interconnection agreement.
5 Cooperation to break out internet related traffic in the least costly manner
6 possible is necessary because it factors into rate calculations. This term was
7 superseded by a bill and keep amendment filed signed on July 31, 2001, and filed
8 with the Commission (sixth amendment, 49 days late). Reciprocal compensation
9 for Internet related terminated traffic at the most favorable rate in any extant
10 USWC agreement. Reciprocal compensation for Internet traffic is a common
11 item in an interconnection agreement and is a necessary term to be stated in an
12 interconnection agreement. Reciprocal compensation is a necessary element a
13 CLEC needs to be able ensure economic feasibility of its operations. The
14 agreement provides a rate under the most favored carrier's treatment and this is
15 not typical for most interconnection agreements. At the time the agreement was
16 negotiated, Internet bound traffic was considered to be interstate in nature and
17 so it was important to split it out for billing purposes.
18 ¶8 related to a dispute that was resolved concerning lines not in Washington.
19 ¶9 related to a dispute that was resolved concerning lines not in Washington.

1 b) Service Performance Indicators in ¶3:

2 i) Implement direct measures of quality (DMOQs). DMOQs are
3 frequently addressed in current interconnection agreements. DMOQs set
4 the performance parameters for service.

5 ii) Implement service performance measurements (SPMs) based on
6 the overall performance index DMOQs (not to be used as basis for a claim
7 for credits); SPMS are integral to implementing functional interconnection
8 in this instance. It is critical to measure performance effectively to be able
9 to insure quality service that is at parity with the incumbent, a very
10 important matter to a CLEC. DMOQs and SPMs facilitate a CLECs
11 endeavors to pass the technical feasibility test for its operations.

12 Interconnection service from the incumbent should be made available to
13 competitors at parity with service quality incumbents offer to their own
14 customers, otherwise competitors do not get service necessary to compete
15 effectively, and they are impaired.

16 iii) DMOQs/SPMs to apply to migration from resale to UNEs. At the
17 time of the agreement, migration from resale to UNE platform was a
18 critical element of an interconnection agreement, and agreement to
19 provide defined service quality was a very valuable trade.

1 c) Special Request, BFR, ICB:

2 ¶¶ 11 and 12 - Dedicated Provisioning Team – The dedicated provisioning
3 team service falls under the category of cooperative practices and procedures
4 and is an interconnection service. The fact Eschelon filed 1A as part of the fourth
5 amendment to its interconnection agreement in Docket No. UT-990385 on
6 December 4, 2000 establishes that the dedicated provisioning team is an
7 interconnection service and 1A is an interconnection agreement. It also shows
8 that Eschelon was on notice of the 30-day filing obligation. Paragraphs 11 and 12
9 indicate that USWC is to dedicate specific personnel to the Eschelon’s offices as a
10 coach knowledgeable of and experienced in working with all the different
11 groups and functions within USWC related to provisioning. Properly input
12 orders, that for one reason or another, are not flowing through the accepted
13 process would be the responsibility of the coach, who would work within USWC
14 to resolve issues as quickly as possible. A dedicated provisioning team will be
15 assigned by USWC to physically locate at the CLEC’s offices, and to work with
16 the coach, handling all of the CLEC’s interaction on order processing. Work
17 through the Minneapolis center seemed to become a preference after the coaches

1 began to investigate and close issues.¹⁸ Before satisfactory operations and
2 support systems (OSS) were in place, as in the instance of this agreement, CLECs
3 were obliged to negotiate terms and conditions for service quality so that they
4 could rely on being able to provide their customers with service that was equal to
5 or better than their main competitor, the incumbent. Without a fully functioning
6 OSS capable of meeting a performance assurance plan (PAP) the dedicated
7 provisioning team and coach would have been extremely valuable terms and
8 conditions of interconnection to any CLEC.

9 d) Terms and Conditions:

10 ¶ 10 relates to the suspension of termination liability assessments (TLAs).

11 The issue is not related exclusively to Minnesota. Although it was resolved in
12 Minnesota for Minnesota operations, it was not closed in Washington, and
13 therefore I kept counting late days right up until June 1, 2004.

14 i) ¶14 Dispute resolution process is defined in the event of future
15 disputes. The FCC has already clarified that dispute resolution processes
16 are properly defined as terms or conditions of an interconnection
17 agreement subject to the filing requirement. Given the concern about

¹⁸ See Issue # 13 at page 8 of Exhibit No. ___(TLW-C-73) "Item Description: Eschelon has had customers losing dial tone on UNE to 1FB with loop reclamation . . . Action/Resolution: Ken will work on having these LSRs provisioned in MPLs. Opened: 7/27/01, Closed: 8/29/01" Notice that the preferences shown here are specific to Eschelon.

1 service quality, it is obvious that an effective dispute resolution process on
2 an ongoing basis is a very valuable interconnection agreement term. The
3 terms for dispute resolution were superseded by one of the agreements
4 dated November 15, 2000, which was terminated by 12A*, which was filed
5 June 7, 2002.

6 In conclusion, 1A is an interconnection agreement, it applied to
7 Washington, and it should have been filed.

8
9 **Q. Please discuss secret agreement 2A between Eschelon and Qwest and explain**
10 **why it is an interconnection agreement.**

11 A. Qwest and the CLEC made this trial agreement specifying the services to be
12 provided under the dedicated provisioning team agreement described in
13 Eschelon 1A. 2A supersedes any prior agreement or understanding(s) and it
14 applied to Washington in addition to other states. Agreement 2A would have
15 expired by its terms on May 1, 2001, however, it was subsequently extended and
16 then ultimately terminated on June 15, 2002, which is when Staff stopped
17 counting days late.

18 a) Special Request, BFR, ICB:

19 i) Dedicated Provisioning Team.

1 (1) Qwest to locate a provisioning team of two Qwest employees at
2 Eschelon's offices (Eschelon to furnish badges, parking, office with locked
3 door but only Qwest has key, office furnishings, five telephone lines with
4 long distance, two phones and a dedicated fax). Qwest to provide and
5 install two PCs with dial-up access to Qwest systems, and two printers.

6 i. Eschelon to perform normal order provisioning activities such as
7 order issuance, order updates, and error resolution. Eschelon to
8 escalate and seek expedition as it deems.

9 ii. Eschelon and Qwest to consider adequacy of human resources
10 every 90 days.

11 iii. Qwest Coach to participate on conference calls between Eschelon
12 and Qwest. Qwest Coach to investigate on a daily basis:

- 13 1. "Reject" and other issues from provisioning activities,
- 14 2. Orders not issued/typed by Qwest,
- 15 3. Confirm information in firm order commitments, and
16 investigate outstanding issues.

17 iv. Qwest coach to conduct root cause analysis and identify trends for
18 issues including:

- 1 1. Order provisioning (orders, interaction with center processes,
- 2 policies),
- 3 2. Request rejects,
- 4 3. Line validation (primary interexchange carrier issues,
- 5 conversions, features),
- 6 4. Billing inquiries, including verifying CSRs,
- 7 5. Escalations,
- 8 6. Expedites,
- 9 7. Chronic repair and service issues related to order provisioning
- 10 functions,
- 11 8. Firm order confirmation timeliness,
- 12 9. Order timeliness, and
- 13 10. Completion.

14 b) Terms and Conditions:

- 15 i) Dispute resolution is agreed in ¶ 10. Dispute resolution is part of
- 16 interconnection service and is an ongoing commitment.
- 17

18 **Q. Please discuss secret agreement 3A between Eschelon and Qwest and explain**
19 **why it is an interconnection agreement.**

1 A. 3A relates to ongoing escalation procedures and business solutions to improve
2 business relations between the two companies, including quarterly meetings
3 between executives to address unresolved and/or anticipated business issues
4 concerning interconnection. The provision of accelerated complaint resolution
5 processes allows a carrier to spend less time and money on troubleshooting, and
6 frees up resources for other, more productive activities. Moreover, even where
7 such a process is not invoked by a carrier, the presence of that process in a
8 contract provides added enforceability, and creates a clear incentive for Qwest to
9 give priority to one carrier's complaints over those of another.¹⁹ Agreement 3A
10 was terminated March 1, 2002 by 12A* ¶3(b)(3), which was filed with the
11 Commission on June 7, 2002.

- 12 1) Terms and Conditions:
- 13 a) escalation procedures and dispute resolution processes are ongoing
14 activities directly involved in the provision of interconnection. The
15 FCC has declared that ongoing escalation procedures and dispute
16 resolution processes constitute interconnection agreement terms
17 and conditions.²⁰

¹⁹ See AT&T response to Colorado 1-5, page 7 of Exhibit No. ___ (TLW-80).

²⁰ Memorandum Opinion and Order, In the Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), WC Docket No. 02-89 (Oct. 4, 2002).

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Q. Please discuss secret agreement 4A between Eschelon and Qwest and explain why it is an interconnection agreement.

A. 4A amends the February 28, 2000 agreement 1A. 4A involves a dispute that Eschelon did not receive UNE-P because Qwest thought Eschelon was not ready to provide services through UNE-P. Agreement 4A was terminated March 1, 2002 by 12A* ¶3(b)(5), which was filed with the Commission on June 7, 2002.

1) Rates:

a) To resolve the dispute, 4A implements a purchase agreement in which Eschelon agrees to purchase \$15 million of telecommunications services between October 1, 2000 and September 30, 2001. In return Qwest paid Eschelon \$10 million, plus Eschelon would be able to collect the revenue it would have billed IXCs for switched access at Qwest rates and usage that would have been billed to end users if accurate billing records had been available (unavailable through resale). Apparently this was necessary due in part to inaccuracies in billing records, a problem which is not limited to Eschelon but which could be of extreme interest to other CLECs as well.

b) all types of interconnection services at a 10% discount through the end of 2005.

1 2) Special Request, BFR, ICB.

2 a) Dedicated Provisioning Team/Consulting:

3 i) Eschelon to provide to Qwest consulting and network-related services,
4 including but not limited to processes and procedures related to
5 wholesale service quality for local exchange service, including, for all
6 lines of local market entry by Eschelon. With this tool, Qwest would
7 convert Eschelon's resale base to UNE-E²¹, without the need for
8 individual local service requests (LSRs) from Eschelon and without
9 adverse customer impact. The agreement provided for the following
10 special assistance:

- 11 1. Loop cutover and conversion,
- 12 2. Repair,
- 13 3. Billing,
- 14 4. Other items.

15 (2) Terms and conditions:

16 (a) Dispute Resolution Process:

²¹ Shortly after agreeing to provide UNE-E to Eschelon, Qwest began to refer to UNE-E as UNE-Star. See Eschelon response to Staff DR 1, page 27 of Exhibit No. ___(TLW_76), which included material from Colorado, specifically, the affidavit of F. Lynne Powers, executive vice president of customer operations for Eschelon, at ¶8.

1 (i) Executives agree to meet and discuss progress quarterly through
2 the end of 2005. In return for these considerations Qwest to pay
3 Eschelon 10% of the aggregate billed charges for all purchase made
4 by Eschelon for Qwest from the execution date of the agreement
5 through December 31, 2005 (rates). Eschelon to invoice Qwest
6 annually (rates).

7
8 **Q. Please discuss secret agreement 5A between Eschelon and Qwest and explain**
9 **why it is an interconnection agreement.**

10 A. 5A was also terminated March 1, 2002 by 12A* ¶3(b)(7), which was filed with the
11 Commission on June 7, 2002.

12 1) OSS:

13 a) accurate carrier access billing records.

14 2) Rates:

15 a) Agreement to verify accuracy of access minutes reported to
16 Eschelon by Qwest. The agreement notes that since November 2000, as an
17 interim measure Qwest paid to Eschelon the difference between \$13 per
18 line per month and the amount Eschelon was able to bill IXCs for
19 switched access per line. In consideration, Qwest increases the interim

1 amount to the difference between \$16 and the amount Eschelon was able
2 to bill. Parties agree to a joint audit. Qwest to pay Eschelon \$2 per line
3 per month to address intraLATA toll traffic terminating to Eschelon
4 customers.

5
6 **Q. Please discuss secret agreement 6A between Eschelon and Qwest and explain**
7 **why it is an interconnection agreement.**

8 A. 6A is another document involved in the implementation of the Qwest/Eschelon
9 plan for arriving at mutually satisfying business relations. Such procedures and
10 matters are items to which CLECs should be entitled under an interconnection
11 agreement. With the exception of Attachment 3, 6A was terminated March 1,
12 2002 by 12A* ¶3(b)(8), which was filed with the Commission on June 7, 2002.

13 Although an interconnection amendment containing an attachment that is very
14 similar to Attachment 3 was filed May 15, 2002, and approved by the
15 Commission as the tenth amendment, the filed attachment is somewhat different.
16 Principally, the difference is that Attachment 3 speaks to UNE-P and the filed
17 amendment referred to UNE-E. Therefore, Staff did not stop counting late days
18 on 6A because it has never been filed.

- 1 a) Rates:
- 2 i) Assumptions are made as to percent direct end office trunking, and
- 3 weighting for tandem routed traffic (Originating direct end office
- 4 trunking (DEOT) in Washington 58%, Originating tandem switching (TS)
- 5 in Washington 42%), (Terminating DEOT in Washington (54.5%),
- 6 Terminating TS in Washington (45.5%)).
- 7 ii) Qwest to calculate intraLATA and interLATA toll and local usage charges
- 8 associated with UNE-P switching by state, so that appropriate state rates
- 9 can be applied to each minute of usage (MOU).
- 10 iii) Qwest invoice to show the rates used to calculate usage charges,
- 11 applicable rate elements are local switching and shared transport, effective
- 12 interconnection agreements are referenced for definition of terms.
- 13 2) Terms and Conditions:
- 14 a) Ongoing escalation procedures.
- 15

16 **Q. Please discuss secret agreement 7A* between Covad and Qwest and explain**

17 **why it is an interconnection agreement.**

18 A. Agreement 7A* was filed August 22, 2002 by Qwest and approved as an

19 amendment to Covad's interconnection agreement. It is my position that any

1 agreement that has been filed and approved is an interconnection agreement.

2 7A* is a service level agreement containing elements that are ongoing services

3 related to the provision of interconnection. 7A* involves a promise from Qwest

4 that it will provide better service, operational improvements, and efficiencies.

5 Quantification methodology is also set forth. In exchange, Covad promised to

6 withdraw its opposition to the Qwest/U S WEST merger. The interconnection

7 elements provided under the secret interconnection agreement include:

8 1) Service Performance Indicators:

9 a) Service Intervals.

10 2) UNEs:

11 a) Firm order confirmation (FOC) process.

12 Covad also considers 7A* to be an interconnection agreement because the

13 agreement describes compliance conditions for Qwest delivery of unbundled

14 loops to Covad.²²

15
16 **Q. Please discuss secret agreement 8A* between McLeod and Qwest and explain**
17 **why it is an interconnection agreement.**

²² See Covad response to Colorado 1-7, Staff DR 06, page 10 of Exhibit No. ___(TLW-77).

1 A. Filed August 22, 2002 by Qwest, and approved as an amended interconnection
2 agreement, taken in its entirety with the rest of the filed agreement, I consider
3 8A* to be a new interconnection agreement.

4 1) Reciprocal Compensation provisions are set forth in the agreement which
5 affect the price of interconnection, and

6 2) Resale conditions for Centrex agreements are amended.

7
8 **Q. Please discuss secret agreement 9A* between McLeod and Qwest and explain**
9 **why it is an interconnection agreement.**

10 A. 9A* was filed August 22, 2002 by Qwest, and approved as an amended
11 interconnection agreement. Taken in its entirety with the rest of the filed
12 agreement, 9A* is a new interconnection agreement because it modifies the
13 prices, terms, conditions and services under the existing, filed, approved
14 interconnection agreement between the two parties. Special Request, *bona fide*
15 request (BFR), or individual case basis (ICB) terms and conditions are set forth in
16 an implementation plan, and terms and conditions concerning ongoing
17 escalation procedures are set forth in 9A*.

18

1 **Q. Please discuss secret agreement 10A* between SBC and Qwest and explain**
2 **why it is an interconnection agreement.**

3 A. Part of a broad remedial filing on August 22, 2002 by Qwest, and approved as an
4 amended interconnection agreement, 10A* taken in its entirety with the rest of
5 the filed agreement is a new interconnection agreement. 10A* provides for an
6 amendment to the conditions for Qwest provision of line exchange unbundled
7 ~~network element platform services secretly negotiated with Eschelon (UNE-E).~~

8

9 **Q. Please discuss secret agreement 12A* between Eschelon and Qwest and**
10 **explain why it is an interconnection agreement.**

11 A. This agreement settles disputes between the parties since the beginning of time
12 through February 28, 2002, in Washington and other states concerning numerous
13 elements of an interconnection agreement: service credits; consulting and
14 network-related services; Carrier access billing for minutes of use; UNE-E line
15 and UNE-E nonrecurring charge credits (UNE-E is defined in the agreement as
16 Unbundled Network Element –Eschelon, a product purchased by Eschelon
17 under its interconnection agreement as amended in November 2000 and August
18 of 2001); and anticompetitive conduct and unfair competition. Because the
19 agreement was filed for approval on August 22, 2002, Staff does not believe there

1 is any issue that this is an interconnection agreement. On page 4 the agreement
2 states it constitutes the entire agreement between the parties. The substance of
3 the agreement determines terms and conditions of interconnection frequently
4 addressed in interconnection agreements such as:

5 1) OSS:

6 a) Terminates Switched access reporting July 3, 2001.

7 b) Billing usage letter November 15, 2000 terminated when manual process
8 ends and Eschelon moves to mechanized process.

9 2) Rates:

10 a) Terminates Purchase agreement November 15, 2000,

11 3) Special Request, BFR, ICB:

12 i) Terminates Implementation plan letter November 15, 2000,

13 ii) Terminates Implementation plan July 31, 2001/August 1, 2001,

14 iii) Attachment 3 relating to July 31, 2001/August 2001 Implementation Plan
15 and UNE-E continues to be binding,

16 iv) Agree to assemble joint team to plan conversion of UNE-E lines to UNE-P,

17 v) Agree to work closely 60 days to implement conversion from manual to
18 mechanized process.

19 4) Terms and Conditions:

1 a) Terminates Escalation procedures and business solution letter November
2 15, 2000.

3 5) UNEs:

4 a) UNE-E and existing business processes offered through the end of
5 November 15, 2000 Interconnection Agreement Amendment Terms.

6 6) Vertical Switch Features:

7 i) Terminates Feature Letter dated November 15, 2000.

8

9 **Q. Please discuss secret agreement 16A* between Covad and Qwest and explain**
10 **why it is an interconnection agreement.**

11 A. 16A* was filed August 22, 2002 by Qwest, and approved as an amended
12 interconnection agreement. Taken in its entirety with the rest of the filed
13 agreement, it modifies the old one, and is therefore a new interconnection
14 agreement. 16A* contains prices, terms and conditions pertaining to ongoing
15 arrangements for collocation facilities decommissioning.

16

17 **Q. Please discuss secret agreement 17A between Eschelon and Qwest and explain**
18 **why it is an interconnection agreement.**

1 A. This letter from Qwest to Eschelon commits responsibility of Qwest to
2 developing implementation plan for various interconnection services.
3 Consulting services to be purchased by Qwest from Eschelon are listed as key
4 component of successful working business relationship. 17A contains
5 amendments to the existing interconnection agreement as follows:

6 1) OSS/Service Performance Indicators:

- 7 a) Cutover and conversion activity quality,
- 8 b) Repair, including post cutover and post conversion repair,
- 9 c) Connectivity billing recording, quality and timeliness,
- 10 d) Use and availability of facilities, including held orders,
- 11 e) OSS issues such as unplanned down time,
- 12 f) Platform billing requirements.

13 2) Special Requests, BFR, ICB:

- 14 a) Implementation Plan,
- 15 b) Dedicated Provisioning Team:
 - 16 i) Secret provisions for cooperative practices and procedures including
 - 17 account support and representation, including project management; and

18 3) Terms and Conditions for ongoing service escalation issues.

19

1 **Q. Please discuss secret agreement 18A between Eschelon and Qwest and explain**
2 **why it is an interconnection agreement.**

3 A. This letter from Qwest to Eschelon addresses features pricing, and indicates that
4 since some features do not have filed rates, such features will be made available
5 with platform orders and included going forward in the flat-based rate.
6 Eschelon indicated in response to discovery in Colorado that the benefit to
7 Eschelon was the certainty of knowing how features would be priced and billed
8 by Qwest.²³ Certainty regarding pricing and billing of features would
9 undoubtedly be of benefit to any other CLEC as well. 18A contains amendments
10 to the existing interconnection agreement as follows:

- 11 1) Rates/Vertical Switch Features:
- 12 a) Washington specific rates included in flat base rate for:
- 13 i) Call trace blocking,
- 14 ii) Collect and third party block,
- 15 iii) Complete a call block,
- 16 iv) Continuous redial block,
- 17 v) Deny 3-way calling,

²³ See Eschelon response to Colorado 1-9 at e), page 16 of Exhibit No. ___(TLW-76).

1 vi) Deny continuous redial,

2 vii) Last call return block.

3

4 **Q. Please discuss secret agreement 19A between Eschelon and Qwest and explain**
5 **why it is an interconnection agreement.**

6 A. This letter is an agreement concerning switched access billing. Eschelon
7 responded to Colorado discovery that this agreement concerns obligations that
8 Qwest would have under an interconnection agreement.²⁴

9 1) OSS daily usage information, ordering process:

10 a) Eschelon to provide working telephone numbers (WTNs) reflecting
11 percentages of multi-line business, Centrex, or ISDN/PRI for purposes of
12 allowing Qwest to credit IXCs PIC charges so that Eschelon can bill IXCs PIC
13 charges. It also sets forth Qwest's commitment to provide high quality daily
14 usage information, as well as necessary assistance and information to
15 determine the accuracy and validity of disputed information related to
16 switched access usage on Qwest's switches.

17 b) the interim process provides daily usage information in a particular format or
18 as mutually agreed. The mechanized process will provide daily usage

²⁴ See Eschelon response to Colorado 1-9 at d), page 16 of Exhibit No. ____ (TLW-76).

1 information via the daily usage feed file. Qwest will bill Eschelon for
2 platform lines, and provide the necessary information and assistance to
3 determine the accuracy and validity of the billed charges.

4

5 **Q. Please discuss secret agreement 20A between Eschelon and Qwest and explain**
6 **why it is an interconnection agreement.**

7 A. 20A is a one page August 1, 2001 letter from Eschelon to Qwest regarding the
8 following interconnection agreement modifications, which both parties were to
9 rely upon going forward.

10 1) Interconnection/Rates/Reciprocal Compensation/UNEs: In effect, amending the
11 initial interconnection agreement's terms and conditions for reciprocal
12 compensation set forth in February 2000, Eschelon agrees to not bill Qwest to
13 terminate local/EAS or internet-bound traffic for any time period before January
14 1, 2001. 20A amends the initial interconnection agreement because prior to
15 January 1, 2001, the initial interconnection agreement between Eschelon and
16 Qwest approved by the Commission on February 24, 2000 provided for
17 reciprocal compensation for local/EAS traffic, an issue hotly debated at the public
18 hearing and disposed of by the Commission in the Order Adopting Arbitrator's
19 Report, in Part; and Approving Negotiated and Arbitrated Interconnection

1 Agreement by ordering U S WEST to make available the reciprocal compensation
2 arrangement in the MFS Agreement under §252(i) of The Act;²⁵

3 a) Local interconnection service (LIS) trunking services, such as but not limited
4 to channel termination (EICTs), Direct End Office Trunking (DEOTs), UNE
5 DS1 and DS3, multiplexing or mileage charges for two-way trunking between
6 the two parties.

7
8 **Q. Please discuss secret agreement 21A between Eschelon and Qwest and explain**
9 **why it is an interconnection agreement.**

10 A. This confidential purchase agreement was a modification to the interconnection
11 agreement relationship between Eschelon and Qwest to facilitate and improve
12 business and operational activities, agreements and relationships between the
13 two parties. The term for ongoing special and secret cooperative procedures is
14 from October 1, 2000 until December 31, 2005, and continues automatically
15 thereafter unless one party gives the other six-month's written notice, yielding
16 potentially significant on ultimate rates through the device of a purchase
17 agreement. 21A sets forth what amounts to an amendment to rates to the effect

²⁵ Docket No. UT-990385, February 24, 2000, Commission in the Order Adopting Arbitrator's Report, in Part; and Approving Negotiated and Arbitrated Interconnection Agreement, ¶148. *See also* Qwest response to Staff DR 038, a) "Qwest had an interconnection agreement that provided for reciprocal compensation for local/EAS traffic. Internet bound traffic was interstate traffic and not covered by this agreement." At page 1 of Exhibit No. ___(TLW-78).

1 that if Eschelon fails to meet the minimum purchase requirement, it will be
2 required to pay Qwest \$10 million and the agreement is terminated.

3
4 **Q. Please discuss secret agreement 23A between Eschelon and Qwest and explain**
5 **why it is an interconnection agreement.**

6 A. This letter with an attachment, is called Confidential Second Amendment to
7 Confidential Trade Secret Stipulation (second amendment to Exhibit 1A). 23A
8 provides secret amendment to the existing filed and approved interconnection
9 agreement as well as other secret interconnection agreements related to special
10 terms and conditions for dispute resolution as follows:

11 1) Terms and Conditions:

12 a) Dispute Resolution:

13 i) 23A provides for dispute resolution concerning: billing, migration from
14 resale to platform pricing and reciprocal compensation. The agreement
15 sets the ongoing terms and conditions of a goal for dispute resolution to
16 be easy administration of the agreements, without the necessity of
17 settlement negotiations, and to that end, agrees to develop methodology
18 for determining amounts due and owing under the agreements signed
19 November 15, 2000.

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Q. Please discuss secret agreement 25A between Integra and Qwest and explain why it is an interconnection agreement.

A. 25A was filed August 22, 2002 by Qwest, and approved as an amended interconnection agreement, taken in its entirety with the rest of the filed agreement, and considered to be a new interconnection agreement. 25A provided for the ongoing relationship related to an interconnection agreement element for collocation facilities decommissioning.

Q. Please discuss secret agreement 26A between AT&T and Qwest and explain why it is an interconnection agreement.

A. 26A provides amendments regarding billing rate factors and interconnection DTT. ¶2B concerning billing and rates factors expired on July 1, 2000 and ¶3 concerning interconnection (DTT) expired on January 7, 2001.

Q. Please discuss secret agreement 27A between ATG and Qwest and explain why it is an interconnection agreement.

A. 27A provides for resolution of issues between the two companies concerning ATG's migration of lines from centrex service retail contracts to a wholesale

1 interconnection agreement. Qwest agrees to notify ATG when it will process the
2 migration orders so that ATG may train its customer service and technical
3 support staffs of the process that will occur. The process will only include a
4 change to Qwest's billing records, and Qwest agrees to help ATG compare the
5 existing retail centrex costs and potential wholesale centrex costs and to not
6 interrupt or change ATG's customer's services as a result of the migration
7 process. ATG agreed in return to withdraw its opposition to the Qwest/U S
8 WEST merger before the Commission. In exchange for valuable considerations,
9 Qwest also credits ATG \$1,600,000. Additional terms for reciprocal
10 compensation pricing, line conditioning, and physical verification of facilities
11 was also granted by Qwest to ATG.

12
13 **Q. Please discuss secret agreement 28A between ELI and Qwest and explain why**
14 **it is an interconnection agreement.**

15 A. 28A contains ongoing reciprocal compensation terms, which are elements of an
16 interconnection agreement expired on December 31, 2001, and factors related to
17 reciprocal compensation that expired and were superseded by the new
18 interconnection agreement docketed in UT-023037 filed on June 25, 2002.

19

1 **Q. Please discuss secret agreement 29A between ELI and Qwest and explain why**
2 **it is an interconnection agreement.**

3 A. 29A concerned, among other things, reciprocal compensation, which is related to
4 interconnection, and was superseded by the new interconnection agreement
5 docketed in UT-023037, filed on June 25, 2002.

6
7 **Q. Please discuss secret agreement 30A between FairPoint and Qwest and explain**
8 **why it is an interconnection agreement.**

9 A. Ongoing escalation procedures were the subject of this agreement and that is
10 what made it an interconnection agreement. FairPoint filed a letter saying it had
11 ceased doing business on May 10, 2002 so Staff stopped counting late days on
12 May 10, 2002.

13
14 **Q. Please discuss secret agreement 31A between MCI and Qwest and explain why**
15 **it is an interconnection agreement.**

16 A. In secret interconnection agreement 31A MCI and Qwest secretly resolve their
17 disputes concerning dark fiber, disconnected circuits, non-recurring charges for
18 switched access trunks, SONET rings, and back-billed charges. Qwest pays MCI
19 a total of XXXXXXXX in credits including principal and interest to settle the

1 dispute and makes some SONET and billing improvements and MCI drops an
2 FCC complaint.

3
4 **Q. Please discuss secret agreement 32A between MCI for Brooks Fiber**
5 **Communications – a wholly owned subsidiary - and Qwest and explain why it**
6 **is an interconnection agreement.**

7 A. 32A contains the following elements related to reciprocal compensation that
8 make it an interconnection agreement. ¶2(A) and (B) concerns the use of traffic
9 split factors to calculate local, EAS, internet-bound and intraLATA toll traffic.
10 ¶2(C) incorporates end office rate elements for reciprocal compensation.

11
12 **Q. Please discuss secret agreement 33A between MCI and Qwest and explain why**
13 **it is an interconnection agreement.**

14 A. 33A was filed August 22, 2002 by Qwest, and approved as an amended
15 interconnection agreement, taken in its entirety with the rest of the filed
16 agreement, and considered to be a new interconnection agreement. 33A contains
17 ongoing terms and conditions related to escalation procedures, making 33A an
18 interconnection agreement.

1 **Q. Please discuss secret agreement 34A between MCI and Qwest and explain why**
2 **it is an interconnection agreement.**

3 A. 34A was filed August 22, 2002 by Qwest, and approved as an amended
4 interconnection agreement, taken in its entirety with the rest of the filed
5 agreement, and considered to be a new interconnection agreement. 34A contains
6 the following elements that are ongoing commitments related to interconnection:

7 1) Interconnection

8 a) PIC process

9 2) OSS

10 a) Ordering process

11 3) Reciprocal Compensation

12 4) Terms and Conditions

13 a) Dispute resolution

14 5) UNEs

15 a) ¶2 indicates WorldCom claimed that private line circuits should have been
16 converted to EELs. The parties disputed their legal obligations, but agreed to
17 a process going forward.

18

1 **Q. Please discuss secret agreement 35A between MCI and Qwest and explain why**
2 **it is an interconnection agreement.**

3 A. 35A contains terms and conditions governing collocation facilities
4 decommissioning which is a common element of interconnection agreements for
5 ongoing terms and conditions of interconnection.

6
7 **Q. Please discuss secret agreement 36A between XO and Qwest and explain why**
8 **it is an interconnection agreement.**

9 A. The second part of ¶4 addresses collocation terms for the state of Washington,
10 and such terms were superseded by collocation orders and rates established by
11 the Commission in Docket No. UT-003013 Part A Order on January 31, 2001. 36A
12 was never filed but Staff stopped counting late days on January 31, 2001.

13
14 **Q. Please discuss secret agreement 40A between XO and Qwest and explain why**
15 **it is an interconnection agreement.**

16 A. Escalation procedures are an ongoing term or condition related to
17 interconnection that constitute an amendment to an interconnection agreement
18 and so this is an interconnection agreement, taken in entirety together with the

1 rest of the agreement it modifies. This makes 40A an interconnection agreement.

2 Qwest filed it on August 22, 2002.

3
4 **Q. Please discuss secret agreement 41A between McCleod and Qwest and explain**
5 **why it is an interconnection agreement.**

6 A. This letter dealt with reciprocal compensation and was superseded by an
7 agreement filed by Qwest on August 22, 2002. 41A modifies the existing
8 agreement and taken in their entirety, the amendment and the underlying
9 agreement constitute a new interconnection agreement.

10
11 **Q. Please discuss secret agreement 42A between McCleod and Qwest and explain**
12 **why it is an interconnection agreement.**

13 A. 42A dealt with service performance indicators ~~reciprocal compensation~~ and was
14 filed by Qwest on August 22, 2002. 42A modifies the existing agreement and
15 taken in their entirety, the amendment and the underlying agreement constitute
16 a new interconnection agreement.

17
18 **Q. Please discuss secret agreement 44A between McCleod and Qwest and explain**
19 **why it is an interconnection agreement.**

1 A. 44A was terminated on September 19, 2000 but never filed, so Staff did not stop
2 counting late days. 44A contains a purchase agreement device to modify filed
3 and approved rates under the existing interconnection agreement that the
4 Commission actually anticipated were relied upon by the parties.

5

6 **Q. Please discuss secret agreement 45A between McCleod and Qwest and explain**
7 **why it is an interconnection agreement.**

8 A. 46A was terminated on September 19, 2000 but never filed, so Staff did not stop
9 counting late days. 46A contains a purchase agreement, which is a device that
10 modifies rates under the existing interconnection agreement.

11

12 **Q. Please discuss secret agreement 46A between McCleod and Qwest and explain**
13 **why it is an interconnection agreement.**

14 A. 46A was terminated on September 19, 2000 but never filed, so I didn't stop
15 counting late days. 46A contains a purchase agreement, which is a device that
16 modifies rates under the existing interconnection agreement.

17

18 **Q. Please discuss secret agreement 47A between Global Crossing and Qwest and**
19 **explain why it is an interconnection agreement.**

1 A. 47A contains going forward terms for conversion to UNE-P or EEL. 47A was
2 filed by Qwest on August 22, 2002, and has been approved as an interconnection
3 agreement.

4

5 **Q. Please discuss secret agreement 48A between ELI and Qwest and explain why**
6 **it is an interconnection agreement.**

7 A. 48A contains an escalation process which is an ongoing term pertaining to
8 interconnection and which was superseded by an escalation process filed with
9 the Commission on June 25, 2002.

10

11 **Q. Please discuss secret agreement 52A between Global Crossing and Qwest and**
12 **explain why it is an interconnection agreement.**

13 A. Provisions for terms and conditions of UNE combinations in Washington were
14 superseded by the third amendment to the interconnection agreement in Docket
15 No. UT-970368 filed on November 13, 2000. However, provisions for issues
16 related to UNE-P conversion, which amends the existing interconnection
17 agreement between the parties remained in place until they were superseded by
18 the provisions of 47A*, which was not filed until August 22, 2002.

1 **Timeliness**

2 **Q. Why is timely filing of interconnection agreements under §252 important?**

3 A. The interpretive policy statement on procedures includes the requirement that
4 interconnection agreements be filed within thirty days after the execution of the
5 agreement.

6 The Commission’s interpretive statement in UT-960269 explains
7
8 “cooperation by parties in these proposed procedures is essential to
9 the effective administration of the Act, and is to the parties’ own
10 benefit in achieving the Act’s purposes. Failure to cooperate with
11 the Commission as it carries out its functions under the Act
12 constitutes a “failure to negotiate in good faith.” 47 USC § 252(b)(5).
13 The term “shall” in the text of this interpretive and policy statement
14 and the model order is used with these considerations in mind.”
15

16 The Commission indicated in UT-960269 that due to the rapidly developing
17 experience of law in implementing The Act, interpretive policy statement would
18 be better than a rule, but that the Commission intended to adopt rules soon. In
19 fact, on January 1, 2004, WAC 480-07-640 was adopted, with the same, tried and
20 true 30 day filing requirement. Thirty days is the same notice required for many
21 other utility filings at the Commission.

22 Qwest participated in the interpretive policy statement rulemaking on
23 procedure, UT-960269, filing comments on April 26, 1996. Qwest has been aware
24 of the “good faith” effort that is expected to meet the filing obligation since just

1 three months after the passage of The Act. Qwest counsel in this case also
2 participated with filed comments on July 16, 1999, in the matter of the first
3 revision of the statement in Docket UT-990355.

4
5 **Q. Please discuss the timeliness issue with regard to the interconnection**
6 **agreements with CLECs listed in Exhibit A?**

7 A. The Exhibit A interconnection agreements are all filed very late and untimely.
8 To count days, I identified the execution date (Column D), typically found in the
9 first paragraph of the agreement, or by identifying the last date either party put
10 on their signature. Starting one day after execution date, count 30 days, the 30th
11 day is the last day, or Due Date (Column E), by which the agreement would have
12 been timely filed, based upon the policy and interpretive statement in Docket
13 No.UT-960269. If the 30th day is not a business day, then the last day the
14 agreement was not untimely is next business day, usually a Monday. I counted
15 the number of days from the due date until June 1, 2004. That is the number of
16 days late (Column G). Some agreements were filed late, but were at least filed,
17 so I counted the number of days until the agreement was filed. Note that in the
18 case of agreements that were filed as amendments to interconnection agreements
19 and not kept secret, the days late is typically a negative number. This is because

1 properly filed agreements typically get filed very quickly and on time, if not well
2 before the due date. Another feature of the information on AT&T's filing
3 activities is that I have indicated at rows 13, 28 and 29 that I was the Staff analyst
4 assigned to review and process the filing. This shows I am also quite familiar
5 with the filing requirement and process, subsequent sheets on other companies
6 shows that I have reviewed interconnection agreements between Qwest and
7 nearly every Respondent.

8 I have evaluated the issue of timeliness of filing status for all of the secret
9 agreements with Qwest. Exhibit No. ___ (TLW-71) provides the number of days
10 each agreement was late.

11 Exhibit No. ___ (TLW-71) provides a summary of the number of days each
12 agreement was late. I have arranged the data by CLEC, and the number of days
13 that all of the agreements were late would be the number that applies to Qwest.
14 Beginning after I discuss Qwest, I will move through the CLECs beginning with
15 the CLEC with the most secret agreements. I provide additional detail
16 concerning the issue below. To the best of my knowledge, every interconnection
17 agreement filed and every order approving an interconnection agreement
18 includes reference by the parties and by the Commission to the good faith 30-day
19 filing obligation set forth in Docket No. UT-960269. It is my belief that the initial

1 interconnection agreement is almost always filed by the CLEC in the case of
2 arbitrated interconnection agreements. I think that is because the incumbent has
3 no interest in hurrying to get it filed and approved, but CLECs are usually
4 anxious to get their new interconnection agreement approved so that they can
5 begin to operate. The process requires that the incumbent be aware of the initial
6 filing, and often the incumbent participates jointly or by responding. As a
7 general finding every single filing refers to the Commission's policy interpretive
8 statement from UT-960269 concerning filing process. To the best of my
9 knowledge, every Order approving an interconnection agreement always
10 admonishes the parties to file amendments in compliance with the good faith
11 filing requirements set out in UT-960269.

12
13 **Q. Please review the information in Exhibit No. ___ (TLW-71), beginning with**
14 **AT&T, and explain for each Respondent why this information shows that each**
15 **Respondent has ample experience with the timeliness filing requirements for**
16 **interconnection agreements.**

17 **A.** Please turn to page 2 of Exhibit No. ___ (TLW-71). Using this page as an example
18 of the remaining worksheets in the exhibit, note that I have arranged all of the
19 agreements pertinent to interconnection and this case in ascending order of

1 Execution Date. Therefore, the analyses in these sheets show chronological
2 context of all of the agreements at issue. AT&T also owns TCG, and between
3 AT&T and TCG, the two companies and their counsel have extensive experience
4 with filing interconnection agreements. In Docket No. UT-960369 AT&T
5 requested negotiation with U S WEST on March 1, 1996. TCG requested to
6 negotiate interconnection on the day The Act passed, February 8, 1996 in Docket
7 No. UT-960326. In UT-960309 AT&T filed the original interconnection agreement
8 for approval on July 25, 1997. Before any amendments were filed, a secret
9 agreement, denominated as 11B in Exhibit B of Order No. 05 was signed on
10 April 24, 2000. Seven amendments have been filed for AT&T by Qwest f/k/a U S
11 WEST in Docket No. UT-960309. Page 2 of Exhibit No. ___ (TLW-71) shows all of
12 the interconnection agreements filed by AT&T, and by AT&T f/k/a TCG.

13 In UT-960326 TCG's initial interconnection agreement was filed by
14 Counsel for TCG, and nine amendments have been filed for TCG Qwest f/k/a U S
15 WEST. There is one secret interconnection agreement between AT&T f/k/a TCG,
16 denominated as 26A and I have stopped counting late days on this item on June
17 7, 2001, because it expired on that date.

1 Page 2 of Exhibit No. ____ (TLW-71) shows that AT&T has usually been on
2 time filing interconnection agreements, and that it doesn't hesitate to file them
3 itself.

4
5 **Q. Please continue the discussion of timeliness with regard to Qwest.**

6 A. According to a list Staff has maintained since approximately September 2000,
7 about 607 adopted, arbitrated, and negotiated interconnection agreements have
8 been filed with the Commission between Qwest and other parties. Although
9 there have been more Qwest interconnection agreement filings than that since
10 the passage of The Act, the most readily available report available through the
11 WUTC Telecom Homepage begins with data from around the middle of 2000.
12 About 30% (177) of the interconnection agreements listed in that report that are
13 with Qwest were adoptions. This shows that the filing requirement and
14 provisions for adoption and pick and choose are known relied upon heavily by
15 CLECs.

16 See Exhibit No. ____ (TLW-74), which is sorted on Column D, which
17 shows the underlying basis for each agreement. For example, some agreements
18 are noted as having been negotiated, as amendments, or as adoptions. In the
19 case of adoptions, the information provided is a reference to the underlying

1 agreement. Exhibit No. ___ (TLW-74) shows that many interconnection
2 agreements are adoptions, and many are also adoption of the SGAT.

3
4 **Q. Please continue and explain the details concerning timeliness found on page 5,**
5 **Exhibit No. ___ (TLW-71) concerning Eschelon.**

6 A. Eschelon has been prolific in terms of entering into secret interconnection
7 agreements, and Exhibit No. ___ (TLW-71) page 5 of 12 reveals the relationship
8 in time between the various interconnection agreements properly filed with the
9 Commission in Docket No. UT-990385, and the secret agreements at issue in this
10 case. In UT-990385 an initial interconnection agreement and fourteen
11 amendments have been filed between Eschelon f/k/a ATT f/k/a Cady and Qwest
12 f/k/a U S WEST. Every cover letter accompanying a filing, and every order by
13 the Commission approving an interconnection agreement or amendment refers
14 to the policy interpretive statement in UT-960269 concerning the good faith 30
15 day filing requirement. Eschelon initially adopted most of the AT&T/U S WEST
16 agreement in UT-960309. Eschelon filed Amendment No. 4 to its Washington
17 Interconnection Agreement containing a one-sentence reference to a dedicated
18 provisioning team, and the Commission in Docket No approved the amendment.
19 UT-990385 on January 24, 2001. The single sentence in the filed amendment is

1 not sufficient to cover all of the terms and conditions of the dedicated
2 provisioning team. For example, the team's tasks are spelled out in fairly great
3 detail in 1A and subsequent agreements. ~~Although §§ 11 and 12 terms may~~
4 ~~have expired on March 17, 2002, the March 17, 2002 agreement was never filed.~~
5 ~~Also, §§ 11 and 12 terms may have been superseded by a May 1, 2000 agreement,~~
6 ~~but there was no agreement dated May 1, 2000 that was filed, although it may~~
7 ~~have terminated on June 15, 2002.~~

8 Note that it was Eschelon, not Qwest, who filed the fourth amendment.
9 This shows that Eschelon is able, when it chooses, to file interconnection
10 agreements in a timely manner itself. Presumably, Eschelon found that it was in
11 the best interest of the company to file the Fourth Amendment promptly because
12 Staff notes that Eschelon beat the 30-day clock by 16 days! Eschelon's cover letter
13 with the Fourth Amendment, filed December 18, 2000, was filed just 14 days after
14 the last signature was put on it, but just two weeks before that, Eschelon entered
15 into six secret agreements in November of 2000 with Qwest that remained in
16 effect for 539 days until they expired by operation of 12A* which was filed by
17 Qwest on June 7, 2002 (a missing piece of the May 15, 2002 filing of a tenth
18 amendment). Qwest also submitted 12A* on August 28, 2002, and it was
19 approved as the eleventh amendment to the interconnection agreement between

1 Qwest and Eschelon. Usually interconnection agreements that were filed
2 between Qwest and Eschelon were filed early or on time. The only notable
3 exception was on October 17, 2001 when the sixth amendment came in 49 days
4 late. Qwest filed the original and other amendments.

5 The individual secret and filed interconnection agreements between
6 Qwest and Eschelon provide insights to the timeliness issue as well.

7 1A Executed February 28, 2000, was late for ~~1,524~~ 718 days. ATI, a
8 predecessor of Eschelon signed this agreement. Eschelon's predecessor
9 (American Telephone and Technology, Inc., (ATT) was the party to the initial
10 interconnection agreement with Qwest, fka U S WEST in Docket UT-990385. The
11 parties were actually unable to negotiate an interconnection agreement, and so
12 the first interconnection agreement between the two, in Docket No. UT-990385
13 was actually the result of arbitration. ATT wanted to adopt almost all of a
14 previously approved agreement between U S WEST and AT&T. However, ATT
15 wanted to adopt a reciprocal compensation rate in an MFS agreement, and the
16 parties requested clarification of the arbitrator's report regarding UNE
17 combinations and pick and choose provisions of the adoption statute, Section
18 252(i), which were also issues pending at the Ninth Circuit Court. The meaning
19 of collocation was also requested for clarification. The Commission's Order

1 Adopting Arbitrator's Report, in Part; Modifying Report, in Part; and Approving
2 Negotiated and Arbitrated Interconnection Agreement was served February 24,
3 2000. Note that this was four days before the date of February 28, 2000, which is
4 on the first page of unfiled, secret agreement 1A. At page 7 of the Order,
5 paragraph 28, the Commission states,

6 "Two central goals of the Act are the nondiscriminatory treatment of
7 carriers and the promotion of competition. (Footnote: [FCC] Local
8 Competition Order, 11 FCC Rcd at 16139, paragraph 1315) The Act
9 contemplates that competitive entry into local telephone markets will
10 be accomplished through interconnection agreements between ILECs
11 and CLECs, which will set forth the particular terms and conditions
12 necessary for the ILECs to fulfill their duties under the Act. 47 U.S.C.
13 Section 251(c)(1). Each interconnection agreement must be submitted
14 to the Commission for approval, regardless of whether the
15 agreement was negotiated or arbitrated, in whole or in part. 47
16 U.S.C. Section 252(d)."

17
18 Thus, the parties were put on notice from the onset of their business relationship
19 that ATT's competitive entry would be accomplished through interconnection
20 agreements, and that the agreements had to be filed for approval. The February
21 24, 2000 Order in UT-990385 makes the conclusion of law at paragraph 135 that
22 the process was conducted pursuant to Section 252 and the Commission's
23 Interpretive and Policy Statement Regarding Negotiation, Mediation,
24 Arbitration, and Approval of Agreements Under the Telecommunications Act of
25 1996. On April 12, 2000, the Commission issued the interpretive and policy

1 statement (first revision), which sets forth requirements for adoption, and makes
2 clear the importance of adoption as a tool for implementing the Act. On
3 November 10, 1999, U S WEST and ATT actually both filed comments about the
4 revision of the interpretive policy statement in Docket UT-990355. A copy of the
5 interpretive policy statement in UT-90355 was served on counsel for U S WEST
6 and for ATT on November 30, 1999. Therefore, the parties were aware of
7 interpretive policy statements governing interconnection agreement procedures.

8 Eschelon indicates in response to Staff second set of data requests,
9 Number 8, (Exhibit No. ___ (TWL-76), that the provisions for a dedicated
10 provisioning team described in Paragraphs 11 and 12 of agreement 1A were
11 applicable to Washington, and that Amendment No. 4 to the Qwest/Eschelon
12 interconnection agreement provided for a dedicated provisioning team.

13 Amendment No. 4 is attached to my testimony as Exhibit No. ___ (TLW-75).

14 Amendment No. 4 was filed in Docket No. UT-990385 on December 18, 2000,

15 however, the reference to a dedicated provisioning team is just one sentence

16 (§2.10 on page 10 of Exhibit No. ___(TLW-75) compared to the much more

17 extensive and specific detail provided in secret unfiled agreement 1A at

18 Paragraphs 11 and 12. Furthermore, Amendment No. 4 states that Eschelon will

19 pay Qwest for the services of the dedicated provisioning team for at least a one

1 year period, although the secret unfiled agreement 1A did not mention any
2 payment by Eschelon for this interconnection service. In conclusion, filing
3 Amendment No. 4 did not stop the clock on the timeliness issue because
4 Amendment No. 4 does not contain any of the elements of 1A except for the
5 truculent reference to a dedicated provisioning team. Eschelon indicates in
6 response to staff data request 9, page 2 of Exhibit No. ___(TLW-76) that dispute
7 resolution and escalation procedures were filed in the initial interconnection
8 agreement approved February 24, 2000. However, this does not stop the
9 timeliness clock. As Eschelon notes, the approved interconnection agreement
10 from UT-990385 stated that the parties would “develop mutually acceptable
11 escalation and expedite procedures.” 1A includes that development and it
12 should have been filed as an amendment to the interconnection agreement.
13 Unfortunately it was not filed. Eschelon also pointed out that Attachment 5 of
14 the approved initial interconnection agreement includes provisions for resolving
15 billing disputes, and dispute resolution in Part A, Section 27. Once again, the
16 processes outlined in 1A are not identical to what was filed, and so the clock is
17 still ticking on timeliness in that regard as well. Qwest did not provide any
18 information to indicate that the services, rates, terms and conditions of the

1 interconnection agreement with Eschelon fka ATT, 1A, were later filed with the
2 Commission for approval.

3
4 **Q. Please continue by discussing timeliness of filings involving McLeod and**
5 **referring to page 10 of Exhibit No. ___(TLW-71).**

6 A. In UT-993007 McLeod entered into an initial interconnection agreement with U S
7 WEST on November 3, 1999. U S WEST made the initial filing promptly on
8 November 10, 1999, in just one week's time. Apparently McLeod was concerned
9 that it wanted to make sure the filing was approved quickly, because on
10 November 29, 1999 McLeod wrote the Commission asking that the item be
11 handles as expeditiously as possible by placing it on the upcoming Commission
12 Open Meeting Agenda the next day, November 30, 1999 (which was done).
13 McLeod and Qwest continued demonstrating thorough knowledge of the filing
14 requirements and process for approval of interconnection agreements by filing a
15 fully negotiated agreement for resale, and then adopted the SGAT which
16 replaced the interconnection agreement in this docket when it was filed in June
17 of 2000 and subsequently was approved. Of course, the two companies also
18 entered into secret interconnection agreements 8A* and 41A, and 42A* during
19 the same time period, selectively choosing which interconnection agreements or

1 amendments to file with the state, and which ones to keep secret. Subsequently
2 there have been 12 amendments to the SGAT. All of the filings in this docket
3 include reference to the 30-day filing requirement in the policy interpretive
4 statement, and §252(e) is mentioned in the orders as well. McLeod and Qwest
5 entered into quite a few secret interconnection agreements, including 8A*, 9A*
6 and 42A* that were filed late by Qwest on August 22, 2002. In column F of the
7 worksheet at line 7 I report that secret interconnection agreement 41A was
8 terminated by 8A* which was filed late by Qwest on August 22, 2002 and which
9 was approved along with 9A* and 42A* as the eighth amendment, so I stopped
10 counting late days on August 22, 2002 for 41A. McLeod and Qwest have had
11 trouble making timely filings. The first, second, and fifth amendments were all
12 somewhat late. McLeod and Qwest also entered into several Exhibit B
13 agreements in 2000 and 2001.

14
15 **Q. Please provide background concerning timeliness of MCI's interconnection**
16 **filings, referring to page 9 of Exhibit No. ___(TLW-71).**

17 A. MCI has experience filing interconnection agreements as MCI Worldcom in
18 Docket No. UT-960323 as well as under the name MCImetro Access
19 Transmission Systems in Docket No. UT-960310 respectively. In Docket No. UT-

1 960323, an initial agreement was requested on February 7, 1996, one day before
2 The Act was effective, and there have been fifteen amendments. Every
3 interconnection agreement filing and order approving it specifically refers to the
4 Commission's policy interpretive statement concerning process for filing
5 interconnection agreements (which says it is good faith to file within 30 days).
6 Like all of the other Orders approving interconnection agreements, it is the best
7 of my recollection and knowledge that the Commission has always directed
8 CLECs and ILECs to file amendments pursuant to §252(e) of The Act. There
9 have been several Exhibit B agreements, as well as Exhibit A agreements with
10 MCIWorldcom, which is the name of the MCI entity that bought MFSIntelenet,
11 which is the original CLEC in Docket No. UT-960323. MCIMetro entered into a
12 pair of Exhibit A agreements. The three remaining Exhibit A interconnection
13 agreements pertaining to the MCI family are 33A, 34A*, and 35A* and they were
14 all late until Qwest filed them on August 22, 2002. I have reviewed several of the
15 interconnection agreements between MCIWorldcom, MCIMetro, and Qwest, and
16 the information I have shows that all of the interconnection agreements and
17 amendments involved have been filed quickly and on time.

18 In Docket UT-960310 MCImetro requested negotiation March 26, 1996,
19 and an initial interconnection agreement was filed on August 27, 1997.

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Q. Please continue and explain timeliness regarding page 4 of Exhibit No. ____ (TLW-71) concerning ELI.

A. Qwest has entered into and filed several interconnection agreements and amendments with ELI. In Docket No. UT-003072 ELI and Qwest negotiated an entire agreement that was approved September 13, 2000 (with reference to the filing process in the policy interpretive statement and admonishments to file amendments in the Order). However, the chronological context into which I have put the filed agreements and the secret agreements shows that ELI and Qwest had already signed 28A and 29A. Terms pertaining to Washington that were ongoing obligations related to interconnection found in all of the secret agreements between ELI and Qwest are listed as expiring on June 25, 2002. ELI amended the agreement in UT-003072 once, and after that was filed, Qwest entered into 18 B and 12B in late April 2001 (listed in Exhibit B of Order No. 05). Subsequently, a fully negotiated agreement and first amendment was filed eight days later in UT-013039 on May 8, 2001. Then on July 19, 2001 Qwest entered into secret agreement 48 A. In April of 2002 23B was executed, followed by a new agreement in June 2002.

1 **Q. Please focus the timeliness of filings and discuss Global Crossing's**
2 **interconnection agreement filing history outlined on page 7 of Exhibit No.**
3 **___(TLW-71).**

4 A. In UT-970368 an initial interconnection agreement and six amendments have
5 been filed between Global Crossing and Qwest f/k/a U S WEST. Global Crossing
6 f/k/a Frontier Local Services initially adopted the previously approved
7 agreement between MFSIntelenet (now owned by MCI) and U S WEST approved
8 in Docket No. UT-960323 . I did not review or process any of the Global Crossing
9 interconnection amendments that were filed, but after being a little slow with
10 getting the initial agreement filed, Global Crossing interconnection agreement
11 amendments have always been filed in a timely manner except for the two secret
12 interconnection agreements that are subject to complaint in this case, 47A* and
13 52A. There are no Exhibit B agreements involving Global Crossing. All of the
14 interconnection agreement filings involving Global Crossings reference the
15 Commission's policy interpretive statement concerning timeliness of filings.

16
17 **Q. Please complete this line of questions by discussing timeliness of**
18 **interconnection agreements between XO and Qwest shown summarized on**
19 **page 12 of Exhibit No. ___ (TLW-71).**

1 A. In UT-960356 XO adopted TCG's agreement with U S WEST, arbitrated in UT-
2 960326, and XO filed it April 10, 1997. Subsequently, there have been fourteen
3 amendments as shown on page 12 of Exhibit No. ___ (TLW-71). I reviewed three
4 of the amendments, and all of the filings have been early, as far as available
5 information shows. There were two Exhibit A agreements and one Exhibit B
6 agreement. One of the secret interconnection agreements, 40A*, was filed by
7 Qwest 204 days late on August 22, 2002.

8

9 **Q. Please describe Covad's filings related to interconnection, this case, and**
10 **Qwest.**

11 A. In UT-980312 Covad filed a request for approval of a negotiated agreement.
12 There have been fifteen amendments to the Covad interconnection agreement
13 with Qwest. Page 3 of Exhibit No. ___ (TLW-71) shows that amendments to the
14 interconnection agreement between Covad and Qwest have always been filed
15 with the Commission in less than 30 days with the exception of agreements 7A*
16 and 16A*. I have reviewed four of the amendments, and processed them for
17 approval by the Commission. Covad and Qwest have always mentioned in each
18 cover letter accompanying the filing of an interconnection agreement or
19 amended agreement that their filing is in compliance with the Commission's

1 filing process, and the Orders approving the filed agreements always require
2 that any new amendments have to be filed in compliance with that process.
3 Additionally, Covad and Qwest are both aware of the filing requirement,
4 illustrated by the fact that they jointly filed the initial interconnection agreement
5 for approval in Docket No. UT-980312, acknowledging the policy interpretive
6 statement in Docket NO. UT-960269 (both companies commented on the
7 statement when it was drafted, both were served a copy of the statement when it
8 was released publicly). The order approving the initial interconnection
9 agreement also spoke of the need to file any future amendments, which the
10 parties did fifteen times with specific acknowledgement of the policy on filing
11 procedures.

12
13 **Q. Please discuss the timeliness of SBC and Qwest interconnection agreements as**
14 **relates to page 11 of Exhibit No. ___ (TLW-71).**

15 A. In UT-023004 SBC's negotiated interconnection agreement was approved on
16 April 24, 2002, and the first amendment was filed August 22, 2002. A second
17 amendment was filed November 12, 2002. The single secret interconnection
18 agreement between SBC and Qwest is 10A*. 10A* was entered into two years

1 before the companies filed the initial interconnection agreement, and it was late
2 until Qwest filed it on August 22, 2002.

3
4 **Q. Please discuss the timeliness experience with filing interconnection**
5 **agreements between Qwest and Fairpoint, relating to page 6 of Exhibit No. ____**
6 **(TLW-71).**

7 A. Staff has settled with Fairpoint and so I will not be providing details about the
8 number of amendments or dates agreements were filed concerning Fairpoint
9 except as relates to Qwest. The Commission's policy interpretive statement
10 concerning filing guidelines and timeliness were referenced in every order and
11 cover letter accompanying the filings.

12 In Docket No. UT-990343 Fairpoint adopted the interconnection
13 agreement approved between Qwest and AT&T in Docket No. UT-960369. The
14 first and second amendments came in just a little bit late, five and six days
15 respectively, but subsequent amendments were filed timely. Fairpoint and
16 Qwest entered into one secret interconnection agreement (30A) on September 4,
17 2001, which Qwest later filed on August 22, 2002. I stopped counting the secret
18 agreement late on May 10, 2002 because Fairpoint submitted a letter on that date
19 that it was ceasing operations as a telecommunications company in Washington.

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Q. Please describe interconnection agreement filing activity relating timeliness and to Integra and Qwest, referring to page 8 of Exhibit No. ___ (TLW-71).

A. In Docket UT-980380 there is an initial interconnection agreement that was fully negotiated and sixteen amendments between Integra and Qwest. All sixteen of the amendments as well as the initial interconnection agreement have been filed by Integra in a timely manner and with reference to the Commission’s policy interpretive statement concerning filing process and timeliness. I reviewed the twelfth and thirteenth amendments. Although interconnection agreements were usually filed on time between Integra and Qwest, Integra entered into 25A, which was not filed until Qwest filed it on August 22, 2002.

Third Cause of Action (Violation of 47 U.S.C. §252(i))

Q. Please discuss Qwest’s failure to make available any interconnection, service, or network element provided under the secret interconnection agreements listed in Exhibit A to any other carrier in a timely manner under the same terms and conditions for other carriers.

A. One of the primary problems is that all of the agreements subject to this complaint are secret and so they are unavailable for inspection or adoption

1 because they were not filed. Five CLECs did at one time request special pricing,
2 and although Qwest engaged in negotiations with each CLEC, none of those
3 requests to negotiate ever resulted in agreements. One can only speculate about
4 the outcome of such a scenario if the secret agreements and preferences involved
5 in this docket had been made available publicly. Petitions, responses,
6 accompanying material, and any documents provided to the Commission
7 pursuant to a request under Section 252(b)(4)(B) are subject to the Washington
8 public disclosure law. Requests for approval and accompanying documentation
9 are subject to the Washington public disclosure law, including the availability of
10 protective orders. The Commission interprets 47 USC § 252(h) to require that the
11 entire agreement approved by the Commission be made available for public
12 inspection and copying. For this reason, the Commission will ordinarily expect
13 that proposed agreements submitted with a request for approval will not be
14 entitled to confidential treatment.

15 If a party or parties wishes protection for appendices or other materials
16 accompanying a request for approval, the party shall obtain a resolution of the
17 confidentiality issues, including a request for a protective order and the
18 necessary signatures (Exhibits A or B to standard protective order) prior to filing
19 the request for approval itself with the Commission.

1 All interconnection services, interconnections, and unbundled network
2 elements that are necessary are properly considered part of an interconnection
3 agreement subject to pick and choose unless the ILEC can demonstrate that a
4 particular interconnection service, interconnection or unbundled network
5 element cannot be made available on the same terms and conditions individually
6 due to technical or cost-based reasons.

7 To the extent other CLECs received better pricing of any services,
8 including UNE-P, through discounts or take-or-pay provisions, for example, or
9 shorter intervals for provisioning of services or more attention to the
10 provisioning service, other CLECs should have been able to adopt such
11 provisions. Pricing and provisioning are critical to entry into the local market
12 and any improvement would have made entry easier for a CLEC.²⁶ To the extent
13 that one CLEC paid more money for wholesale services that were resolved more
14 quickly or on an expedited basis for other CLECs who enjoyed the benefits of
15 secret interconnection agreements that were not made available for adoption, the
16 CLEC was harmed. To the extent a CLEC loses customers or reputation because
17 of unavailability of a specific pricing or provisioning term or condition granted
18 in secret to a competitor, it might have sustained harm.

²⁶ See MCI response to Colorado 1-2, page 3 of Exhibit No. ___(TLW_79).

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Q. Does your analysis of secret interconnection agreements in Exhibit A showing the Days Late relate to §252(i) violations?

A. Yes. For each agreement that was not filed it would be a violation of §252(i) for the number of Days Late reported for Qwest in Exhibit No. ___ (TLW-71).

Fifth Cause of Action (Violation of RCW 80.36.170)

Q. Did Qwest make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, not including contracts for services classified as competitive?

A. Yes. This is true for all of the secret agreements listed in Exhibits A and B. My Exhibit No. ___(TLW-72) provides a summary of the secret agreements that violate RCW 80.36.170. All of the agreements analyzed for violations of RCW 80.36.170, RCW 80.36.180, and RCW 80.36.186 include prices, terms, or conditions for services not classified as competitive.

1 **Q. Please explain.**

2 A. The issue is Qwest's treatment of wholesale customers. First of all, each and
3 every Exhibit A agreement was kept secret and was not filed as shown in my
4 analyses of the Second and Third Causes of Action.²⁷ Secondly, all of the Exhibit
5 B agreements were also kept secret. Secrecy enabled harm to occur because of
6 unreasonable preferences and advantages given to some CLECs but prejudicing
7 other CLECS who did not receive similar treatment or receive the opportunity of
8 pick and choose.

9
10 **Q. What is the basis for your analysis?**

11 A. First of all, I have shown in my analysis of violations of §§ 252(e) and (i) that each
12 of the Exhibit A agreements is an interconnection agreement that should have
13 been filed and made available for adoption. The fact that Qwest entered into
14 secret interconnection agreements that were not made publicly available shows
15 that Qwest gave preferences. The element of secrecy makes the preferences
16 undue and unreasonable as well as the fact that they caused harm. Some of the
17 information I will use was collected in response to Staff's discovery request for
18 Respondent's responses to data requests in concerning many of the same

²⁷ See Eschelon response to Staff DR 04 "Eschelon was not in any position to dispute this practice, given the disparity in bargaining power between the parties." At page 8, Exhibit No. ___(TLW-76)

1 agreements and issues under investigation before the Public Utilities
2 Commission of the State of Colorado (Colorado PUC) in Colorado PUC Docket
3 No. 02I-572T. I have attached Exhibits to my testimony containing all of the
4 responses to Staff discovery, including the material concerning Colorado PUC
5 Docket No. 02I-572T for reference. Similarly, secret agreements in Exhibit B give
6 preferences that were withheld from other carriers. I will provide a detailed
7 analysis of each agreement.

8
9 **Q. Please provide examples of the types of preferences found in the secret**
10 **agreements that may have caused harm?**

11 A. As I mentioned earlier in my discussion of 3A under the Second Cause, the
12 provision of accelerated complaint resolution processes allows a carrier to spend
13 less time and money on troubleshooting, and frees up resources for other, more
14 productive activities. Moreover, even where such a process is not invoked by a
15 carrier, the presence of that process in a contract provides added enforceability,
16 and creates a clear incentive for Qwest to give priority to one carrier's complaints
17 over those of another. Another example is the case of the dedicated provisioning
18 team that Qwest provided on Eschelon's premises to coach Eschelon to
19 successfully implement pricing, ordering, maintenance, provisioning and billing

1 of services via interconnection, resale or UNEs and UNE platforms. Part of the
2 agreement to cooperate in this venture included Qwest's commitments that the
3 coaches would expedite resolutions directly as well as by anticipation, training
4 and planning. Vigorous monitoring, investigation, analysis and closure of basic
5 pricing, ordering, maintenance, provisioning and billing of service issues was
6 accomplished by the dedicated provisioning team's well-organized, highly
7 structured process that was specifically implemented through the secret
8 interconnection agreements 1A, 2A, 4A and 17A. In 2A, Attachment 1, ¶4.2.2.5
9 the Qwest coaches were to use root cause data analysis and identified trends to
10 propose policy/process changes, present reviews, and recommend and
11 implement action plans.

12 In Staff DR 036 Staff sought evidence of reports, and in Qwest's response,
13 Attachment A Staff was provided about a two inch thick pile of highly
14 confidential documents on yellow paper which contain page after page of team
15 work process documents addressing issues and their resolutions. I have selected
16 a representative example, which is one of many "Friday Forum Action Items"
17 reports on the status of issues as of December 10, 2001 and it is attached to my
18 testimony as Exhibit No. C- (TLW-C-73). The December 10, 2001 Friday
19 Forum status report was a document that was reviewed at regular meetings

1 between Qwest and Eschelon personnel and shows the specific preferences
2 Qwest gave to Eschelon in secret to address 25 different items. The status report
3 indicates whether the item is an open or closed issue, and shows the opened and
4 closed dates. It describes each issue, the issue originator and the owner of the
5 issue. For example, the first page shows Item #24 was opened on October 24,
6 2001 and closed on January 9, 2002. The issue was that Eschelon was
7 experiencing problems submitting local service requests (LSRs) with Custom
8 Ringing through the Internet Mediated Access (IMA). In resolving the problem,
9 Eschelon was given specific information about the IMA fix which gave it the
10 advantage of knowing that it would not be confused, although the wholesale
11 markets web page did not change from the perspective of other CLECs who may
12 have been experiencing similar problems because the documentation on the
13 wholesale markets web page did not mirror how IMA was accepting such
14 requests. Similar special preferences and advantages accrued to Eschelon as
15 revealed by the detailed status report on the other 23 items as well. Effective
16 ordering is an essential ingredient to the pricing, ordering, maintenance,
17 provisioning, and billing of telecommunications services, so the secret
18 preferences and advantages, which Eschelon enjoyed, were valuable. Other
19 CLECs suffered by not enjoying similar advantages.

1 In many cases Eschelon received what many other CLECs who didn't get
2 the secret, special deal wish they could have received from Qwest. 2A sets forth
3 action plans for insuring service performance of the operations support systems
4 (OSS) necessary for communicating details concerning service orders and
5 provisioning. The trial agreement goals are desirable terms for interconnection,
6 which any CLEC might have wanted to adopt. The services under this
7 agreement are necessary for Eschelon to most efficiently interconnect and
8 compete. Paragraph 3 of the Trial Agreement sets forth the main goals as
9 follows:

- 10 i. Evaluate feasibility of offering dedicated provisioning team at
11 Eschelon locations outside of Qwest service centers
- 12 ii. Evaluate whether the dedicated provisioning team at Eschelon
13 location outside of Qwest service centers reduces the number of
14 errors in orders submitted by Eschelon.

15 A major set of benefits for Eschelon under 2A include that the Qwest
16 Coach would provide root cause analysis and recommendations concerning
17 identified trends. This might include recommendations for training, or
18 process/policy change. At paragraph 4.2.2.5 of the trial agreement it stated that
19 Qwest would present quarterly reviews of the agreement's status, successes and

1 failures to senior management at both companies. Qwest also agrees to
2 recommend and implement action plans, and to provide feedback and the Qwest
3 coach will act as liaison with Qwest on service and order provisioning issues that
4 are not resolved through normal operations and provisioning processes. There is
5 no doubt that this agreement has great value to Eschelon, because it deals
6 specifically with the actual process of competition where Eschelon is winning
7 customers in the marketplace. Gaining market share is one of the primary goals
8 of any CLEC and they do it by signing up customers and provisioning them with
9 service. Any marketing scheme is a failure if the product can't be priced,
10 ordered, provisioned, maintained, and billed (POPMB). By making the terms
11 and conditions of the agreement for interconnection services secretly unavailable
12 to other CLECs it is apparent that severe harm from discrimination and unfair
13 disadvantages occurred.

14 With regard to 3B, the advantages to Eschelon of having a clear agreement
15 setting forth levels of dispute resolution escalation procedures, with participants
16 named beginning for ten business days at the vice president level (1), and
17 continuing through the senior vice president for 10 business days (2), the CEO
18 for 10 business days (3), arbitration within 90 days (4), CEOs again for 10

1 business days (5), and courts in Minnesota or Colorado, the respective
2 headquarters locations of the parties (6).

3
4 **Q. Did respondents provide evidence of benefits they gained from the secret**
5 **agreements?**

6 A. Yes, in 17A Eschelon/Qwest - The letter does not specify dollar values or
7 payments. An agreement to enjoy terms and conditions for a successful working
8 business relationship concerning pricing, ordering, provisioning, maintenance,
9 and billing of interconnection services goes to the core of the economic and
10 technical feasibility of interconnection.

11 19A is another example of preferences. The letter does not set forth any
12 charges but discusses accurate daily usage information, which is necessary to
13 correctly bill IXCs PIC charges. This may have represented substantial revenues
14 to CLECs in November 2000. The large number of billing disputes and
15 settlements identified in this case speaks to the importance of accurate daily
16 usage information and carrier billing information.

17
18 **Q. Please discuss the discovery information related to Colorado PUC Docket No.**
19 **02I-572T.**

1 A. Taking into account that the agreements were kept secret for a long time, it is not
2 surprising that many CLECs did not really know what would have happened if
3 they had known of special offers others were getting, and if those offers had been
4 made publicly available. However, AT&T's response was that it would
5 definitely have been easier, and that agreements provide for discounts,
6 accelerated complaint resolution, special attention, "take or pay" arrangements,
7 "consulting," or other incentives, privileges, or advantages, would have made
8 AT&T's competitive entry into the local market easier.²⁸ AT&T considered the
9 most glaring example of a secret agreement that would have made local
10 competition easier involved the provision of discounts to other carriers and not
11 to all carriers in a nondiscriminatory manner.²⁹

12 Covad has offered similar information focusing on discounts. Partly
13 because of the veil of secrecy in Colorado. Eschelon said that it was speculative
14 to say competitive entry would have been easier if it had the option of choosing
15 amongst the secret agreements to adopt, pick, or choose. However, Eschelon
16 indicated that MCI's June 29, 2001 agreement regarding EELs (34A) would have
17 made it easier for Eschelon to establish local competitive entry.³⁰

²⁸ Colorado Staff Data Request 1-2, AT&T Response to WUTC Staff DR No. 06, page 6, Exhibit No. ____ (TLW-80).

²⁹ AT&T response Colorado 1-3, Staff DR 6.Id.

³⁰ 34A Exhibit No. ____ (TLW-31).

1 AT&T said in Colorado “any advantage provided in a discriminatory
2 manner to one CLEC, and not to others, would by its very existence facilitate the
3 market entry of that one CLEC, and not others. Thus, even where the offer of a
4 particular term or condition is not a *sine qua non* for a specific carrier’s market
5 entry, the discriminatory effect is still present, and is still illegal.”³¹

6 To the extent that one CLEC paid more money for wholesale services that
7 were resolved more quickly or on an expedited basis for other CLECs who
8 enjoyed the benefits of secret interconnection agreements that were not made
9 available for adoption, the CLEC was harmed. To the extent a CLEC loses
10 customers or reputation because of unavailability of a specific pricing or
11 provisioning term or condition granted in secret to a competitor, it might have
12 sustained harm.

13 With regard to CLECs who did not participate in secret interconnection
14 agreements, to the extent that entry decisions were based on higher prices and
15 lower quality service provisioning compared to the secret agreements, the non-
16 participating CLECs were harmed, and so were their end users. The result is
17 damage to competition, the competitive marketplace, and loss of consumer
18 welfare.

³¹ AT&T Response to Colorado 1-4 via WUTC Staff DR No. 6., page 6 Exhibit No. ____ (TLW-80).

1 It is not known that other non-party CLECs would have adopted any
2 particular agreement in part or in whole. If the rates developed under an
3 agreement were made available to other non-parties it is not possible to know the
4 effect on Qwest's revenues. Perhaps price elasticity of demand for the subject
5 services is great, perhaps it is not. It is not known, but generally, it is safe to
6 assume that if the price went down, then consumption probably would have
7 gone up, resulting in additional revenues to Qwest. Lower prices and greater
8 demand might have maximized consumer welfare and producer surplus at the
9 same time.

10 It is very difficult to estimate the amount of intangible harm to
11 competition that Qwest has caused. For example in the case of the 10% discount
12 for all services provided to Eschelon through 2005, some of those services may
13 not be regulated services, hence it is difficult to measure the amount of harm
14 because the data is unavailable for that reason.³²

15 According to Covad, assuming other companies were offered a 10%
16 discount for specific services that Covad requires in order to provide service,

³² Exhibit No. ____ (TLW-n) Qwest response to Staff DR 40, page 3 of Exhibit No. ____ (TLW-78).

1 then the discount would have been beneficial to Covad.³³ Secret agreement 4A
2 with Qwest was just such an agreement.

3 Staff attempted to identify the amount of money refunded, credited,
4 discounted or otherwise paid to carriers pursuant to the secret agreements, but
5 Qwest reported in response that Qwest's records and systems were not designed
6 to track settlement agreements or payments, but rather were designed to track
7 orders and products billed and provided.³⁴

8 Furthermore, Qwest has indicated it would take the general position that
9 parties to disapproved agreements would not be entitled to a refund for services
10 that Qwest provided and the CLEC accepted.³⁵

11
12 **Q. With regard to the secret agreements listed in Exhibit A and in Exhibit B,**
13 **please discuss each one as to whether it gives or makes any undue or**
14 **unreasonable preference or advantage to any person, corporation or locality, or**
15 **subject any particular person, corporation or locality to any undue or**
16 **unreasonable prejudice or disadvantage in any respect whatsoever.**

³³ Covad response to Colorado 1-3, Staff DR 06, page 9 of Exhibit No. ___(TLW-77).

³⁴ Exhibit No. ___ (TLW-n) Qwest response to Staff DR 42, page 4 of Exhibit No. ___(TLW-78).

³⁵ Exhibit No. ___ (TLW-n) Qwest response to Staff DR 13. Id. page 5.

1 A. Exhibit No. ___ (TLW-72) provides a summary of Qwest's violations of RCW
2 80.36.170. The numbers shown represent the number of days that the secret
3 agreement has been in force.

4
5 **Q. Please describe the undue or unreasonable preferences or advantages to any or**
6 **unreasonable prejudice or disadvantage in any respect whatsoever that you**
7 **have found in each specific Exhibit B agreement.**

8 A. I do so below:

9 1B Arch/Qwest – in this secret agreement Arch agrees to drop it's
10 complaint at the FCC and in return Qwest agrees to Arch's adoption of the
11 Airtouch interconnection agreement for Washington.

12 2B CelAir/Qwest – in this secret agreement Qwest refunds XXXXXX as
13 a result of an adverse FCC decision affecting a billing dispute for local and
14 nonlocal interconnection facilities. The FCC had ruled that ILECs could not
15 charge paging carriers for certain interconnection facilities used to deliver LEC
16 originated traffic.

17 3B Cook/Qwest – this secret agreement resolves a billing dispute related to
18 an FCC decision that ILECs may not charge paging carriers for certain

1 interconnection facilities used to deliver LEC originated traffic. Qwest paid
2 Cook XXXXXX to settle the matter.

3 4B MCIWorldCom/Qwest – Qwest gave special preference in return
4 for MCIWorldCom dropping a complaint and paying money. 4B is a January 30,
5 2000 agreement containing ongoing preferences for a variety of wholesale
6 interconnection elements to be provided by U S WEST. Also, in exchange for
7 MCIWorldCom dropping various billing disputes and complaints at both the
8 intrastate and interstate level, MCIWorldCom receives a net payment of
9 XXXXXX. The interconnection service elements provided under 4B include one-
10 time resolution of disputes concerning collocation rates at ¶1.1 D. and E. 4B
11 includes ongoing commitments concerning interim local number
12 portability/market expansion line (ILNP/MEL) at ¶1.1 C.

13 5B MCIWorldCom/Qwest – 5B makes valuable ongoing provisions for
14 sharing of commercially valuable technical and business information related to
15 secret negotiations covering issues about:

- 16 1. Operations Support Systems (OSS) – Customer Record
17 Information Systems (CRIS) billing products;
- 18 2. Rates for EEL pricing and term volume commitments;
- 19 3. Reciprocal compensation;

- 1 4. Terms and conditions for escalation procedures; and
- 2 5. UNEs – LIS trunking issues, and EEL.

3 Qwest gave special preference by granting special secret privileges
4 regarding confidential technical and business information related to the
5 provision of the interconnection agreement, as well as capital lease
6 arrangements, XDSL, virtual optimization, and switched access pricing.

7 6B Ernest/Qwest - Qwest gave Ernest special preference by granting
8 special secret privileges regarding conversion from public access line (PAL)
9 resale to UNE-P PAL in return for various concessions by Ernest. Qwest also
10 wired XXXXXXXX to Ernest.

11 7B Eschelon/Qwest – secret amendments to 1A change the payment
12 schedule quarterly rather than annual, and enhancing the terms governing
13 confidentiality.

14 8B Level3/Qwest – in this agreement Qwest gives undue preference to
15 Level3 through a XXXXXXXX payment in return for Level3's withdrawal of its
16 opposition to the Qwest/U S WEST merger.

17 9B MetroNet/Qwest - in this agreement Qwest gives undue preference
18 to MetroNet through a XXXXXX payment, and a XXXXXXXX bill credit to ostensibly

1 resolve billing disputes and in return for MetroNet's withdrawal of its
2 opposition to any state proceedings involving Qwest's 271 application.

3 10B Paging Network/Qwest – in this secret agreement Qwest agrees to
4 pay XXXXXXXX to settle a billing dispute concerning interconnection facilities
5 provided in various states including Washington.

6 11B AT&T/Qwest – this secret agreement is a one-time settlement of
7 AT&T's opposition to the Qwest/U S WEST merger in return for Qwest not
8 pursuing open access issues related to AT&T subsidiary cable television
9 networks in Portland, Oregon.

10 12B ELI/Qwest – this secret agreement extends the right to terminate
11 the rate agreements reached in 29A which amends 28A.

12 13B MCI/Qwest – Qwest gave MCI undue preference by secretly
13 resolving a dispute concerning provisioning and billing of various services and
14 facilities provided under state tariffs. Qwest paid XXXXXXXX on July 16, 2001 to
15 MCI in return for waiver of impositions related to MCI having paid for ISDN PRI
16 (primary rate interface) service rates instead of Central Office Based Remote
17 Access (COBRA), billing dispute resolution process implementation, and waiver
18 by MCI of any and all allegations or potential claims arising from most favored
19 nations pricing dispute over COBRA.

1 14B Metrocall/Qwest – 14B accompanies provisions in a December 4,
2 2000 letter from Qwest to Metrocall in which ongoing benefits in rates because
3 Qwest wrote off XXXXXX that included charges for the transiting portion of local
4 facilities. The companies were interconnected because Metrocall provided
5 paging services. In this confidential billing settlement Metrocall is to receive a
6 new paging service interconnection agreement and money in return for
7 resolution of disputes concerning local and non-local interconnection facilities.

8 15B XO/Qwest - XO purchases various services, including
9 noncompetitive interconnection services, under federal and state tariffs from
10 Qwest. In this secret agreement, Qwest and XO agreed to purchase various
11 services and amounts from each other and they also entered into several
12 confidential billing settlement agreements. As to the purchase agreement, Qwest
13 is to purchase XXXXXXXX in 2002 from XO, XXXXXXXX in 2003, and XXXXXXXX
14 in 2004. XO is to purchase from Qwest XXXXXXXX in 2002, XXXXXXXX in 2003
15 and XXXXXXXX in 2004. The agreement applies throughout the states in which
16 the two companies both operate. The parties also mutually committed to a joint-
17 build of facilities in Austin, Texas as part of the three-year deal involving a net-
18 exchange of XXXXXXXXXX in XO's favor.

1 16B Z-Tel/Qwest – in exchange for a litigation stand-down Z-Tel is
2 promised expedited negotiations for a new interconnection agreement or
3 amendments.

4 17B Thrifty Call/Qwest – is a one-time confidential billing settlement
5 release pertaining to intrastate direct trunk transport in states including
6 Washington. To reconcile their differences, Qwest paid a one –time credit of
7 XXXXXXXXX.

8 19B McLeod/Qwest - In exchange for \$38,500,000 paid by McLeod to
9 Qwest, this September 29, 2000 secret agreement resolves disputes concerning
10 conversion from resale to UNEs and termination liabilities. The ongoing
11 commitment for Qwest to convert to the new platform includes provision of
12 daily usage information including call origination, call termination, call duration,
13 and call type information.

14 20B McLeod/Qwest – this secret agreement gives McLeod special,
15 undue preference by amending conditions involving their secret April 28, 2000
16 interconnection agreement, 8A*. Although 20B does not contain ongoing
17 provisions related to §251, it does include special preference to McLeod by
18 settling a billing dispute concerning conversion from resale to UNE platform-
19 based operations. In return for resolution of the dispute, Qwest pays McLeod

1 \$27,500,000 no later than November 10, 2000 to represent an approximation of
2 switched access amounts that McLeod could have billed interexchange carriers
3 had it been providing services via UNEs rather than through resale.³⁶

4 21B McLeod/Qwest – this secret agreement commits Qwest to accepting
5 individual end user information for inclusion in directory listing and directory
6 assistance databases.

7 22B McLeod/Qwest - This secret agreement resolves billing disputes
8 from the beginning of time through October 31, 2001, concerning Qwest’s failure
9 to set station message detail record (SMDR) flags properly so that McLeod could
10 record and accurately bill long distance messages. 22B also resolves the billing
11 disputes from the beginning of time through December 31, 2001, concerning
12 interconnection arrangements, including reciprocal compensation on all trunks,
13 billing tapes not supplied to McLeod, LIS trunking, and collocation sites. Qwest
14 pays McLeod \$2,500,000 by January 8, 2002, and both parties release the other
15 from further related claims.23B ELI/Qwest – this secret agreement reduces the
16 principles of secret interconnection agreement 48A to a confidential settlement

³⁶ Staff asked Qwest to provide the actual amount of money that it paid in each agreement. Qwest responded that such a request was overly broad and burdensome. Qwest said that aside from the enormous volume of data and analysis that would be required, Qwest’s records and systems do not track settlement agreements and payments. *See* Qwest response to Staff DR 42, page 4 of Exhibit No. ____ (TLW-78).

1 agreement. Credits totaling \$1,230,000 are issued by Qwest pursuant to a
2 quarterly schedule.

3 24B Nextel/Qwest – in return for Nextel dropping its arbitration of
4 reciprocal compensation issues, Qwest pays Nextel XXXXXXXX secretly.

5 25B Sprint/Qwest – this agreement settles disputes over Qwest’s carrier
6 common line (CCL) charges involving vendor intercepted services, specifically
7 call waiting, three way calling, call forwarding, voicemail, FX and paging. In
8 consideration of Sprint dropping an FCC complaint, Qwest pays Sprint
9 XXXXXXXX, including principal and interest.

10 26B Allegiance/Qwest - this secret agreement settles billing disputes
11 regarding past provisioning of multiple DS-0 unbundled loops to single locations
12 and the related pricing and application of the interconnection agreement terms of
13 coordinated installation without testing of DS-0 unbundled loops. The parties agree
14 to add a component to the DS-0 coordinated installation without testing rates to
15 reflect a \$60 rate per DS-0 for coordinated installation without testing when a
16 minimum of four unbundled DS-0s per location per order is submitted.

17

Sixth Cause of Action (Violation of RCW 80.36.180)

1
2 **Q. By negotiating secret agreements did Qwest do rate discrimination by directly**
3 **or indirectly, or by any special rate, rebate, drawback or other device or**
4 **method, unduly or unreasonably charge, demand, collect or receive from any**
5 **person or corporation a greater or less compensation for any service rendered**
6 **or to be rendered with respect to communication by telecommunications or in**
7 **connection therewith, than it charges, demands, collects or receives from any**
8 **other person or corporation for doing a like and contemporaneous service with**
9 **respect to communication by telecommunications under the same or**
10 **substantially the same circumstances and conditions, not including any**
11 **contracts for services classified as competitive under RCW 80.36.330?**

12 **A. Yes. First of all, I have found that all of the Qwest contracts that I analyze below**
13 **for violations of RCW 80.36.180 are for services that are not classified as**
14 **competitive. I have attempted to estimate harm caused by the Exhibit A and**
15 **Exhibit B agreements. However, it is very difficult to reconstruct all of the events**
16 **because of a variety of factors. For example, “benefits from better service and**
17 **operational improvements and efficiencies are fluid and change on a day to day**
18 **basis.³⁷”**

³⁷ Covad response to Staff DR 06, Colorado 1-9 a. See page 11 of Exhibit No. ____ (TLW-77).

1 Furthermore, analyzing agreements that have either expired or have been
2 terminated is extremely difficult and problematic. Taking account of actual
3 benefits received as opposed to potential benefits of the contract when entered
4 into and the actual costs incurred by each party to the secret interconnection
5 agreement should put the parties in the same position that they would have been
6 in had the transaction never occurred. Also a series of agreements may be
7 interdependent upon each other and it is not possible to analyze one without
8 analyzing the others.³⁸

9 I can however, provide a list of the payments that are specifically
10 enumerated in the agreements themselves, and that analysis is summarized in
11 terms of the number of violations in Exhibit No. ___ (TLW-72). Also, through
12 discovery Staff sought information about estimated monthly benefits under the
13 agreements, and I will provide information about that material as well. I provide
14 this additional information, as much as was available for each agreement below.

15
16 **Q. What are the estimated monthly benefits under the agreements?**

17 **A.** Staff asked this question but the discovery responses were generally that the
18 request was vague, and that the agreements speak for themselves. Amazingly,

³⁸ See Eschelon response to Colorado 1-1, at page 11 of Exhibit No. ___(TLW-76).

1 many of the parties have not calculated a monthly benefit in either dollars or any
2 other benefit associated with the agreements.³⁹ Often the agreements do not
3 detail amounts of money transacted under the agreement.

4 The effect on other CLECs that did not have the opportunity to adopt
5 similar terms and conditions can only be assumed. In response to discovery,
6 AT& provided a copy of its responses to Colorado Staff data requests in the
7 parallel proceeding in Colorado. AT&T indicated that “to the extent any
8 settlement between Qwest and another carrier provides that other carrier with a
9 benefit of the bargain, in connection with a secret interconnection agreement, the
10 settlement will have a discriminatory effect upon other competitors that merely a
11 return of money will not resolve.”⁴⁰ Most other CLECs, it can be safely assumed,
12 would be most eager to obtain several of the terms and conditions in the secret
13 agreements.⁴¹

14
15 **Q. Do you analyze each Exhibit A and B agreement under the sixth cause of**
16 **action? Explain.**

³⁹ See AT&T response to WUTC Staff DR. No. 05 (page 1 of Exhibit No. ___(TLW-80), Also Eschelon response to WUTC Staff DR. No. 05 (page 9 of Exhibit No. ___(TLW-76)

⁴⁰ Staff Data Request to AT&T No. 06, Attachment A, Response to Staff’s First Set of Data Requests to CLECs, Response to Data Request 1-1 (Colorado docket No. 02I-572T), page 5 of Exhibit No. ___(TLW-80).

⁴¹ See AT&T response to Colorado 1-6, id. page 8.

1 A. No. Although any benefit gained may effect rates, and therefore result in
2 discrimination, I choose to analyze only certain agreements for their direct and
3 indirect effects on rates. For example, I chose not to analyze whether an
4 agreement governing exchange, use, and release of confidential information falls
5 under the sixth cause of action.

6
7 **Q. For Exhibit A and Exhibit B agreements please describe whether Qwest**
8 **engaged in rate discrimination by directly or indirectly, or by any special rate,**
9 **rebate, drawback or other device or method, unduly or unreasonably charge,**
10 **demand, collect or receive from any person or corporation a greater or less**
11 **compensation for any service rendered or to be rendered with respect to**
12 **communication by telecommunications or in connection therewith, than it**
13 **charges, demands, collects or receives from any other person or corporation for**
14 **doing a like and contemporaneous service with respect to communication by**
15 **telecommunications or in connection therewith under the same or**
16 **substantially the same circumstances and conditions.**

17
18 A. My analysis is summarized in Exhibit No. ___ (TLW-72), which shows for each
19 agreement whether it was a violation of the sixth cause of action by indicating

1 the number of days that the violation occurred. Specific details I found showing
2 discrimination under the sixth cause of action are shown by secret agreement
3 below.

4 1A Eschelon/Qwest – in return for, among other things, dropping its
5 opposition to the Qwest/U S WEST merger, Eschelon receives the following
6 credits:⁴²

7 1) Credits:

8 a) Credit ATI \$89,290 for overall performance credits for October and November
9 1999

10 b) Credit ATI \$380,000 to resolve outstanding disputes relating to the wholesale
11 discount and the definition of the discount on twenty or more lines at a single
12 location, resolves past and future claims on these two issues

13 c) Credit ATI \$15,800 to correct past errors in discounting flat rated trunking

14 d) Credit ATI \$175,918 for not applying discount as of 2/15/2000 to twenty or
15 more lines at a location

16 2) The agreement shows credits totaling \$661,008. It is not known how much
17 recurring effect there was.

⁴² Eschelon claims it also had a verbal agreement not to oppose §271 for Qwest, *See* Eschelon June 24, 2002 letter to Arizona Commissioner Mark Spitzer at footnote 7, and at times Qwest told Eschelon it could not “be there” at §271-related workshop in Denver, *see* footnote 8, page 20, Exhibit No. ____ (TLW-76).

1 2A Eschelon/Qwest

2 b. Payments: Eschelon to pay Qwest \$9,206 per month subject to 1-1/2% per
3 month late charges, or maximum allowable by law, whichever is less.

4 4A Eschelon/Qwest – Qwest to pay Eschelon a 10% blanket discount in
5 exchange for “consulting services.” There have been numerous payments under
6 4A, the total is unknown. The effect of a blanket 10% discount is very large if it is
7 unavailable to other CLECs.

8 5A Eschelon/Qwest – The total transaction value is unknown because it
9 depends upon how many lines each month and how much Eschelon was able to
10 bill IXCs. Eschelon was given credits under this secret interconnection
11 agreement and any CLEC would like to have an agreement to receive accurate
12 carrier access billing records and to receive credits like Eschelon gets under this
13 agreement.

14 8A – McLeod/Qwest – in this agreement Qwest pays McLeod \$29,700,000
15 in exchange for various concessions including dropping opposition to the
16 merger.

17 12A Eschelon/Qwest

18 Payments: Qwest to credit Eschelon \$7,912,000 with offsets as follows:

19 b) Apply \$6,380,000 against UNE-E and associated charges through 2/28/02

1 c) Apply \$1,532,000 (the remaining amount) against all current and disputed
2 invoices through 2/28/02

3 Eschelon enjoyed \$7,912,000 in credits for service quality issues that were
4 not made available to other CLECs.

5 18A Eschelon/Qwest - The dollar value of this agreement is not known.
6 The effect of receiving the listed features essentially for free is unknown, but it
7 was an advantage to Eschelon that was kept secret from other CLECs, and
8 therefore it was unavailable to other CLECs via adoption.

9 20A Eschelon/Qwest - the agreement is that Eschelon will not charge
10 Qwest for terminating certain traffic and for providing certain connecting
11 network elements. The economic effect is indeterminate.

12 23A Eschelon/Qwest

13 Qwest pays Eschelon \$1,176,000, no reciprocal compensation is due either
14 party for October 1, 2000 through February 28, 2001. The effect of being able to
15 enjoy easy administration and resolution with settlement negotiations, to settle
16 for credits and payments, and to develop future billing methods jointly must
17 have been very desirable for Eschelon and hence would have been very useful
18 for other CLECs as well if the terms and conditions had been filed and made
19 available for adoption.

1 25A – Integra/Qwest – Resolving a collocation decommissioning dispute, a
2 one-time credit of \$115,461.48 was paid by Qwest to Integra to offset future
3 amounts payable to Qwest.

4 26A AT&T f/k/a TCG/Qwest – Qwest pays \$3,047,078.25 due without
5 interest in interconnection agreements.

6 27A ATG/Qwest - In exchange for valuable considerations, Qwest
7 credits ATG \$1,600,000.

8 28A ELI/Qwest – Qwest to pay ELI \$15,500,000 to avoid future disputes.

9 29A ELI/Qwest – relates to 28A, Qwest to pay ELI \$15,500,000 to avoid
10 future disputes.

11 30A Fairpoint/Qwest – Qwest pays Fairpoint a one-time sum of
12 \$200,000.

13 32A MCI/Qwest – Qwest to pay MCI XXXXXXXXXX to resolve usage,
14 Internet related traffic, and local reciprocal compensation disputes in various
15 states including Washington where MCI operates as a CLEC.

16 34A MCI/Qwest – Qwest pays MCI XXXXXXXXXX one-time to settle
17 disputes, claims and controversies including issues involving EEL, terminating
18 compensation, reciprocal compensation, and PIC process.

1 35A MCI/Qwest – Qwest to pay MCI a total of XXXXXXXX in credit
2 reimbursements to resolve disputes concerning nonrecurring and recurring
3 charges.

4 36A XO/Qwest – Settling interim local number portability/terminating
5 switched access/800 originating and terminating records issues Qwest pays XO
6 XXXXXXXX disbursed as a bill credit/cash payment. Settling disputes about end
7 user disconnection processes, Qwest pays XO XXXXXXXX in the form of a bill
8 credit. Settling a Washington collocation dispute, Qwest pays XO XXXXXXXX per
9 new site, excluding augments. Regarding Spokane/Seattle BAN claims, Qwest
10 pays XO XXXXXXXX.

11 40A XO/Qwest – Cash payments of XXXXXXXX plus billing credits were
12 issued to XO.

13 41A McLeod/Qwest – In consideration for McLeod’s withdrawal from
14 Qwest/U S WEST merger dockets, McLeod’s withdrawal of an FCC complaint,
15 and to resolve non-blocked Centrex disputes, Qwest pays McLeod \$6,000,000.

16 46A McLeod/Qwest - Qwest agrees to pay McLeod a total of
17 \$32,500,000.

1 47A Global Crossing/Qwest – Qwest pays Global Crossing \$8,300,000
2 one-time to exchange a release and satisfaction of billing and provisioning
3 disputes.

4 52A Global Crossing/Qwest - – in consideration of payment of \$1 Global
5 Crossing releases, acquits, forever discharges Qwest from a billing dispute.

6 4B MCIWorldCom/Qwest – Qwest pays MCIWorldCom XXXXXX to
7 settle access claims about carrier common line (CCL) charges.

8 6B Ernest/Qwest – Qwest pays Ernest XXXXX to resolve past disputes
9 and, in significant part, based upon Ernest’s profile.

10 8B Level3/Qwest – Qwest pays Level3 XXXXX in exchange for Level3’s
11 withdrawal of its opposition from the Washington Qwest/U S WEST merger
12 case.

13 9B MetroNet/Qwest – in consideration for resolution of disputes and
14 MetroNet dropping opposition to Qwest §271 proceedings, Qwest pays XXXXX
15 for alleged billing errors and a one-time XXXXXX credit.

16 13B MCI/Qwest – Qwest to pay MCI XXXXXXXX to settle disputes and
17 controversies.

18 14B Metrocall/Qwest – Qwest pays XXXXXXXX by writing off Metrocall
19 bills.

1 15B XO/Qwest - XO purchases various services, including
2 noncompetitive interconnection services, under federal and state tariffs from
3 Qwest. In this secret agreement, Qwest and XO agreed to purchase various
4 services and amounts from each other and they also entered into several
5 confidential billing settlement agreements. The agreement applies throughout
6 the states in which the two companies both operate. The parties also mutually
7 committed to a joint-build of facilities in Austin, Texas as part of the three-year
8 deal involving a net-exchange of XXXXXXXX in XO's favor.

9 20B McLeod/Qwest - Qwest pays McLeod \$27,500,000

10 22B McLeod/Qwest - This secret agreement resolves billing disputes
11 from the beginning of time through October 31, 2001, concerning Qwest's failure
12 to set station message detail record (SMDR) flags properly so that McLeod could
13 record and accurately bill long distance messages. 22B also resolves the billing
14 disputes from the beginning of time through December 31, 2001, concerning
15 interconnection arrangements, including reciprocal compensation on all trunks,
16 billing tapes not supplied to McLeod, LIS trunking, and collocation sites. Qwest
17 pays McLeod \$2,500,000 by January 8, 2002, and both parties release the other
18 from further related claims.23B ELI/Qwest – This secret agreement reduces the
19 principles of secret interconnection agreement 48A to a confidential settlement

1 agreement. Rebates totaling \$1,230,000 are issued by Qwest pursuant to a
2 quarterly schedule.

3 24B Nextel/Qwest- Qwest to pay Nextel XXXXXX in consideration of
4 Nextel's release and agreement to dismiss pending arbitration.

5 25B Sprint/Qwest – this agreement shows preference to Sprint was given
6 for Qwest's carrier common line (CCL) charges involving vendor intercepted
7 services, specifically call waiting, three way calling, call forwarding, voicemail,
8 FX and paging. In consideration of Sprint dropping an FCC complaint, Qwest
9 paid Sprint XXXXXXXX, including principal and interest.

10 26B Allegiance/Qwest - this secret agreement gives special rates to
11 Allegiance by settling billing disputes regarding past provisioning of multiple
12 DS-0 unbundled loops to single locations and the related pricing and application
13 of the interconnection agreement terms of coordinated installation without
14 testing of DS-0 unbundled loops. The parties agree to add a component to the
15 DS-0 coordinated installation without testing rates to reflect a \$60 rate per DS-0
16 for coordinated installation without testing when a minimum of four unbundled
17 DS-0s per location per order is submitted.

18

Seventh Cause of Action (Violation of RCW 80.36.186)

1
2 **Q. As to the pricing of or access to noncompetitive services, did Qwest make or**
3 **grant any undue or unreasonable preference, prejudice, advantage, or**
4 **competitive disadvantage to itself or to any other person providing**
5 **telecommunications service?**

6 A. Yes, for example, a discount to one carrier and not to all carriers acts to increase
7 the other carrier's costs of providing service, and results in a direct, dollar for
8 dollar injury to other carrier's market entry. In addition, customers and the
9 revenue associated with them have also been lost to other carriers who have been
10 provided the discount. In those cases, the carrier or carriers receiving the
11 discount may have obtained customers as a result of price comparisons, which
12 have been distorted by those discriminatory discount agreements.

13 Likewise, "take or pay" agreements provide a direct subsidy to a carrier,
14 where payment has been made for products or services not rendered. The same
15 is true for a "consulting" agreement, where the "consulting services" provided
16 by a CLEC are identical to the activities the CLEC normally engages in when
17 obtaining interconnection (i.e., establishment of operations and processes,
18 testing, verification, process improvements, and so forth). The harm here is
19 compounded where these "consulting services" are paid for by means of a

1 discount on the purchase of products and services, because then the amount paid
2 for the “consulting services” has absolutely no relationship to the value, nature,
3 or extent of the services, if any, actually rendered.

4 As I have shown in my analysis of violations of the requirement to file
5 interconnection agreements under §252(e), and my analysis of discrimination
6 under RCW 80.36.170, Qwest has given secret and therefore undue preference in
7 every agreement listed in Exhibit A and in Exhibit B. Furthermore, all of the
8 interconnection services as well as other local and nonlocal services, prices,
9 terms, and conditions that are listed in the various secret agreements in Exhibits
10 A and B relate or pertain to telecommunications services that are not classified as
11 competitive under RCW 80.36.330.

12
13 **Q. Please provide specific analysis of each Exhibit A and Exhibit B agreement as**
14 **to violations of the seventh cause of action.**

15 A. My analysis is summarized in Exhibit No. ___ (TLW-72), which shows for each
16 agreement whether it was a violation of the seventh cause of action by indicating
17 the number of days that the violation occurred. Specific details I found showing
18 discrimination under the seventh cause of action are shown individually for each
19 secret agreement below.

1 1A Eschelon/Qwest – this secret interconnection agreement grants
2 Eschelon preferential rates for reciprocal compensation. Reciprocal
3 compensation relates to rates and is not a competitively classified service. Qwest
4 also gave preference to Eschelon in the access to ordering systems through
5 coaches and a dedicated provisioning team which was special and not afforded
6 to other carriers desiring to purchase similar non-competitive
7 telecommunications services. Qwest agreed to give Eschelon secret service
8 performance assurances and indicators and special access to dispute resolution
9 for interconnection-related issues that do not relate to competitively classified
10 telecommunications services.

11 2A Eschelon/Qwest – Qwest gave Eschelon unreasonable preference in
12 access to non-competitive interconnection services through the dedicated
13 provisioning team secret agreement.

14 3A Eschelon/Qwest- Qwest gave Eschelon unreasonable preference in
15 access to non-competitive interconnection services through an escalation/dispute
16 resolution process in the secret agreement.

17 4A Eschelon/Qwest – Through the net-exchange of \$5,000,000 Eschelon
18 is able to realize lower expenses due to pricing and Eschelon also receives a
19 blanket 10% discount for all services, which would include access services and

1 other non-interconnection related items. Also, a dedicated provisioning team
2 and dispute resolution process give Eschelon preferential access to non-
3 competitive services.

4 5A Eschelon/Qwest – Qwest to pay Eschelon the difference between \$13
5 per line per month and the amount Eschelon was able to bill IXCs for switched
6 access since resale lines were not satisfactorily converted to UNE platform.

7 Qwest secretly agrees to also pay up to \$16 per line due to further considerations,
8 plus \$2 per line to address intraLATA toll traffic terminating to Eschelon
9 customers. Switched access, and accurate OSS, is a noncompetitive
10 telecommunications service.

11 6A Eschelon/Qwest - Without knowing the minutes of use and rates, it
12 is not possible to know the amount of money transacted under the agreement,
13 nor the value to other non-party CLECs who didn't get to adopt the same terms
14 and conditions. Likewise, without knowing the minutes of use and rates, it is not
15 possible to know the economic impact, but it is safe to assume it may have been
16 large, given how important toll revenues are to CLEC operations. However,
17 there is an effect on prices for access to services under this secret interconnection
18 agreement. Assumptions were made as to traffic patterns, which favorably affect

1 the rates that Eschelon would pay. For noncompetitive services governed by the
2 terms of the contract.

3 7A Covad/Qwest- Qwest agrees in this secret commitment to provide
4 better quality service, operational improvements and efficiencies to Covad
5 related to non-competitively classified interconnection services.

6 8A* McLeod/Qwest – preferential secret agreement is provided for
7 reciprocal compensation, affecting rates for resale of Centrex. Centrex resale is
8 not a competitively classified service, it is an interconnection service and
9 obligation under §251.

10 9A* McLeod/Qwest – Qwest secretly promises preferential access to
11 noncompetitive telecommunications interconnection services through favorable
12 implementation plans and escalation procedures on a going forward basis.

13 10A* SBC/Qwest – in this secret agreement Qwest provides preferential
14 treatment for the provision of access to unbundled network elements that are not
15 classified as competitive telecommunications services.

16 12A Eschelon/Qwest – service credits are affected as well as a purchase
17 agreement is terminated. The preferential effect is unknown. Through this
18 secret and preferential agreement Eschelon was able to derive certainty about

1 access to noncompetitive telecommunications services such as OSS, manual and
2 mechanized billing usage processes, UNEs, and vertical features.

3 16A* Covad/Qwest – is a secret interconnection agreement pertaining to
4 non-competitively classified collocation service by preferential facilities
5 decommissioning arrangements.

6 17A Eschelon/Qwest – this secret interconnection agreement gives
7 preferential access to noncompetitive telecommunications services through
8 special OSS/Service Performance Indicators.

9 18A Eschelon/Qwest – this agreement provides for secret, preferential
10 rates for call trace blocking, collect and third party block, complete a call block,
11 continuous redial block, deny-3-way calling, deny continuous redial, and last call
12 return block. The preference is that these services do not have rates and are
13 included in a flat base rate for free. As part of unbundled switching, these
14 services are not classified as competitive telecommunications services under
15 RCW 80.36.330.

16 19A Eschelon/Qwest – this secret interconnection agreement deals with
17 preferences in the provision of access to switched access, and ultimately of rates
18 through improved OSS daily usage and ordering process. Switched access via
19 UNE and OSS are not classified as competitive telecommunications services.

1 20A Eschelon/Qwest – this secret interconnection agreement grants
2 special preference in the pricing of and access to noncompetitively classified
3 interconnection and unbundled network elements including reciprocal
4 compensation terms and UNEs.

5 21A Eschelon/Qwest - If Eschelon doesn't purchase a minimum of \$42
6 million of products from Qwest from January 1, 2005 through December 31, 2005,
7 where payment is due no later than January 15, 2005, and if Eschelon fails to
8 meet the commitment, the agreement is terminated and Eschelon will pay Qwest
9 a \$10 Million penalty, which is 24% of the 2005 revenue commitment to Qwest. If
10 Qwest sells exchanges the commitment will be reduced proportionally. In return
11 Qwest agrees to provide services at agreed rates which are not specified or
12 referenced in the pages of the agreement that are available for Staff review.
13 Eschelon enjoys by virtue of this agreement unique rates that are negotiated
14 individually with Qwest to be equal to the result of a formula based upon
15 Eschelon's successful performance in the market competing for customers. Other
16 CLECs were not able to adopt a similar deal because it was kept strictly secret.

17 23A Eschelon/Qwest – in this secret interconnection agreement provides
18 preferential access to noncompetitive interconnection services via advantageous
19 secret dispute resolution processes.

1 25A Integra/Qwest – in this secret interconnection agreement Qwest
2 gives preferential pricing of and terms and conditions related to access to
3 noncompetitive collocation facilities and collocation facility decommissioning.

4 26A AT&T/Qwest – concerns preferential, secret billing and rates factors
5 for access to and pricing of interconnection services not classified as competitive
6 such as direct-trunked transport.

7 27A ATG/Qwest – Qwest gave ATG preferential rates including rates
8 for reciprocal compensation and by agreeing to help ATG compare the existing
9 retail centrex costs and potential wholesale centrex costs as a result of retail to
10 wholesale centrex migration process. ATG agreed in return to withdraw its
11 opposition to the Qwest/U S WEST merger before the Commission. In exchange
12 for valuable considerations, Qwest also gave ATG \$1,600,000.

13 28A ELI/Qwest – contains preferential secret reciprocal compensation
14 terms and factors for access to and pricing of interconnection services not
15 classified as competitive.

16 29A ELI/Qwest - contains preferential secret reciprocal compensation
17 terms and factors for access to and pricing of interconnection services not
18 classified as competitive.

1 30A* Fairpoint/Qwest – with preferential escalation procedures
2 advantageous access to noncompetitive telecommunications services was
3 granted to Fairpoint by Qwest.

4 31A MCI/Qwest – the parties secretly resolve their disputes concerning
5 pricing of and access to noncompetitive services including dark fiber,
6 disconnected circuits, non recurring charges for switched access trunks, SONET
7 rings, and back-billed charges. Qwest paid MCI a total of \$3,974,000 in credits
8 including principal and interest to settle the dispute and makes some SONET
9 and billing improvements and MCI drops an FCC complaint.

10 32A MCI/Qwest – contains preferential secret reciprocal compensation,
11 traffic split factors, end office rate elements terms and factors for access to and
12 pricing of interconnection services not classified as competitive such as extended
13 area service (EAS).

14 33A MCI/Qwest – Qwest gave preference in access to noncompetitive
15 interconnection services through secret agreement concerning escalation
16 procedures.

17 34A MCI/Qwest – contains preferential secret reciprocal compensation
18 terms and factors for access to and pricing of interconnection services not
19 classified as competitive including OSS, EELs and UNEs.

1 35A* MCI/Qwest – preferential access to and pricing of noncompetitive
2 collocation facilities is committed under this secret interconnection agreement.

3 36A XO/Qwest – preferential access to and pricing of noncompetitive
4 collocation facilities is committed under this secret interconnection agreement.

5 40A XO/Qwest - Qwest gave preference in access to noncompetitive
6 interconnection services through secret agreement concerning escalation
7 procedures.

8 41A McLeod/Qwest - contains preferential secret reciprocal
9 compensation terms and factors for access to and pricing of interconnection
10 services not classified as competitive.

11 42A McLeod/Qwest - contains preferential secret reciprocal
12 compensation terms and factors for access to and pricing of interconnection
13 services not classified as competitive.

14 44A McLeod/Qwest – involves a preferential purchase agreement,
15 which affects the net rate paid for noncompetitive telecommunications services.

16 45A McLeod/Qwest - involves a preferential purchase agreement, which
17 affects the net rate paid for noncompetitive telecommunications services.

18 46A McLeod/Qwest - involves a preferential purchase agreement, which
19 affects the net rate paid for noncompetitive telecommunications services.

1 47A Global Crossing/Qwest – provides preferential terms for access to
2 noncompetitive UNE-P or EEL.

3 48A ELI/Qwest - Qwest gave preference in access to noncompetitive
4 interconnection services through secret agreement concerning escalation
5 procedures.

6 52A Global Crossing/Qwest - provides preferential terms for access to
7 noncompetitive UNE-P conversions.

8 1B Arch/Qwest – in this secret agreement Arch agrees to drop it's
9 complaint at the FCC and in return Qwest agrees to Arch's adoption of the
10 Airtouch interconnection agreement for Washington. This is a preference in
11 access to noncompetitive services.

12 2B CelAir/Qwest – in this secret agreement Qwest refunds XXXXXX as
13 a result of an adverse FCC decision affecting a billing dispute for local and
14 nonlocal interconnection facilities which are not classified as competitive

15 3B Cook/Qwest – this secret agreement resolves a billing dispute related to
16 an FCC decision that ILECs may not charge paging carriers for access to certain
17 noncompetitive interconnection facilities used to deliver LEC originated traffic.

18 Qwest paid Cook XXXXXX to settle the matter.

1 4B MCIWorldCom/Qwest – this secret agreement gives preferences
2 and undue advantages to MCIWorldCom in the form of rates determined by
3 favorable PIU charges for noncompetitive access. It also sets forth special
4 preferences concerning rates for ILNP/MEL, late payments, and collocation.
5 ILNP/MEL and collocation are noncompetitive telecommunications services.

6 5B MCIWorldCom/Qwest – in this secret interconnection agreement
7 Qwest gave special preference in the access to noncompetitive services by
8 secretly amending the interconnection agreement favorably for MCIWordCom
9 by granting special secret privileges regarding confidential technical and
10 business information related to the provision of the interconnection agreement,
11 as well as capital lease arrangements, XDSL, virtual optimization, and switched
12 access pricing.

13 6B Ernest/Qwest - in this secret interconnection agreement Qwest gave
14 Ernest special preference by secretly amending the interconnection agreement
15 favorably for Ernest by granting special secret privileges regarding conversion
16 from noncompetitive public access line (PAL) resale to UNE-P PAL in return for
17 various concessions by Ernest. Qwest also wired XXXXXX to Ernest.

18 7B Eschelon/Qwest – secret amendments to 1A give preference in rates
19 and access to noncompetitive telecommunications services through a change to

1 the payment schedule to require quarterly rather than annual payments, and
2 enhancing the terms governing confidentiality.

3 8B Level3/Qwest – in this agreement Qwest gives undue preference to
4 Level3 in the pricing of noncompetitive telecommunications services through a
5 XXXXXXXX payment in return for Level3’s withdrawal of its opposition to the
6 Qwest/U S WEST merger.

7 9B MetroNet/Qwest - in this agreement Qwest gives undue preference
8 to MetroNet for the pricing of noncompetitive telecommunications services
9 through a XXXXXXXX payment, and a XXXXXXXX bill credit to ostensibly resolve
10 billing disputes and in return for MetroNet’s withdrawal of its opposition to any
11 state proceedings involving Qwest’s 271 application.

12 10B Paging Network/Qwest – in this secret agreement Qwest agrees to
13 pay XXXXXXXXX to settle a billing dispute concerning noncompetitive
14 interconnection facilities provided in various states including Washington.

15 11B AT&T/Qwest – this secret agreement results in what amounts to a
16 preference in the pricing of access to noncompetitive facilities through a one-time
17 settlement of AT&T’s opposition to the Qwest/U S WEST merger in return for
18 Qwest not pursuing open access issues related to AT&T subsidiary cable
19 television networks in Portland, Oregon.

1 12B ELI/Qwest – this secret agreement extends the right to terminate
2 the rate agreements reached in 29A which amends 28A which gave undue
3 preference in reciprocal compensation terms and factors for access to and pricing
4 of interconnection services not classified as competitive.

5 13B MCI/Qwest – Qwest gave MCI undue preference impacting the
6 price paid for noncompetitive services by secretly resolving a dispute concerning
7 provisioning and billing of various services and facilities provided under state
8 tariffs. Qwest paid XXXXXXXX on July 16, 2001 to MCI in return for waiver of
9 impositions related to MCI having paid for ISDN PRI (primary rate interface)
10 service rates instead of Central Office Based Remote Access (COBRA), billing
11 dispute resolution process implementation, and waiver by MCI of any and all
12 allegations or potential claims arising from most favored nations pricing dispute
13 over COBRA.

14 14B Metrocall/Qwest – in this confidential billing settlement Metrocall
15 is to receive a new paging service interconnection agreement and money in
16 return for resolution of disputes concerning noncompetitive local and non-local
17 interconnection facilities.

1 15B XO/Qwest Qwest gave XO preferential pricing of and access to
2 noncompetitive interconnection services in a net exchange of over XXXXXXXXX in
3 XO's favor during a three year period continuing through 2004.

4 16B Z-Tel/Qwest – in exchange for a litigation stand-down Z-Tel is
5 promised expedited negotiations for a new interconnection agreement or
6 amendments which is not a competitive service.

7 17B Thrifty Call/Qwest – is a one-time confidential billing settlement
8 release pertaining to intrastate noncompetitive direct trunk transport in states
9 including Washington. To reconcile their differences, Qwest paid a one –time
10 credit of XXXXXXXX.

11 19B McLeod/Qwest - Qwest gave special preference in the pricing of
12 noncompetitive services by secretly amending the interconnection agreement
13 favorably for McLeod in return for resolution of a billing dispute concerning
14 conversion to a new platform.

15 20B McLeod/Qwest – this secret agreement gives McLeod special,
16 undue preference in the pricing of noncompetitive services by amending
17 conditions involving their secret April 28, 2000 interconnection agreement, 8A*.
18 Although 20B does not contain ongoing provisions related to §251, it does
19 include special preference to McLeod by settling a billing dispute concerning

1 conversion from resale to UNE platform-based operations. In return for
2 resolution of the dispute, Qwest pays McLeod \$27,500,000 no later than
3 November 10, 2000 to represent an approximation of switched access amounts
4 that McLeod could have billed interexchange carriers had it been providing
5 services via UNEs rather than through resale.⁴³

6 21B McLeod/Qwest – this secret agreement commits Qwest to accepting
7 individual end user information for inclusion in directory listing and directory
8 assistance databases, which are not competitive telecommunications services.

9 22B McLeod/Qwest 22B McLeod/Qwest - This secret agreement
10 resolves billing disputes from the beginning of time through October 31, 2001,
11 concerning Qwest's failure to set station message detail record (SMDR) flags
12 properly so that McLeod could record and accurately bill long distance messages.

13 22B also resolves the billing disputes from the beginning of time through
14 December 31, 2001, concerning interconnection arrangements, including
15 reciprocal compensation on all trunks, billing tapes not supplied to McLeod, LIS
16 trunking, and collocation sites. Qwest pays McLeod \$2,500,000 by January 8,
17 2002, and both parties release the other from further related claims 23B

⁴³ Staff asked Qwest to provide the actual amount of money that it paid in each agreement. Qwest responded that such a request was overly broad and burdensome. Qwest said that aside from the enormous volume of data and analysis that would be required, Qwest's records and systems do not track settlement agreements and payments. See Qwest response to Staff DR 42, page 4 of Exhibit No. ___(TLW-78).

1 23B ELI/Qwest – this secret agreement reduces the principles of secret
2 interconnection agreement 48A for access and pricing of noncompetitive services
3 to a confidential settlement agreement. Credits totaling \$1,230,000 are issued by
4 Qwest pursuant to a quarterly schedule.

5 24B Nextel/Qwest – in return for Nextel dropping its arbitration of
6 pricing of access to noncompetitive interconnection via reciprocal compensation
7 issues, Qwest pays Nextel XXXXXXXX secretly.

8 25B Sprint/Qwest – this agreement settles disputes over Qwest’s carrier
9 noncompetitive common line (CCL) charges involving vendor intercepted
10 services, specifically call waiting, three way calling, call forwarding, voicemail,
11 FX and paging. In consideration of Sprint dropping an FCC complaint, Qwest
12 pays Sprint XXXXXXXX, including principal and interest.

13 26B Allegiance/Qwest - this secret agreement settles billing disputes
14 regarding past provisioning of multiple noncompetitive DS-0 unbundled loops to
15 single locations and the related pricing and application of the interconnection
16 agreement terms of coordinated installation without testing of DS-0 unbundled
17 loops. The parties agree to add a component to the DS-0 coordinated installation
18 without testing rates to reflect a \$60 rate per DS-0 for coordinated installation

1 without testing when a minimum of four unbundled DS-0s per location per order is
2 submitted.

3
4 **Staff Recommendations for Penalties**

5 **Q. What are Staff's recommendations for potential enforcement of penalties?**

6 A. Staff has provided a count of the violations and leaves it up to the Commission to
7 determine how much penalty to assess per violation. Staff understands that
8 through briefing an approach based on legal principles and public policy may be
9 suggested, but Staff ultimately leaves the issue up to the Commission. Exhibit
10 No. ___ (TLW-71) summarizes penalty potentials against the CLEC respondents
11 concerning the second cause of action, and Exhibit No. ___ (TLW-72) summarizes
12 the penalties against Qwest for the second, third, fifth, sixth and seventh causes
13 of action. The penalties against CLEC respondents to the second cause of action
14 would be liable for penalties of up to \$1,000 per day for each day that §252(e) was
15 violated.

16 **Conclusion**

17 **Q. Does this conclude your testimony?**

18 A. Yes.